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In the Supreme Court of the United States

OCTOBER TERM, 1933

STATE OF FLORIDA, EUGENE S. MATTHEWS, MAMIE EATON-GREEN, and W. B. DOUGLASS, etc., ET AL,
Appellants,

VERSUS

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, GEORGIA PUBLIC SERVICE COMMISSION, and ATLANTIC COAST LINE RAILROAD COMPANY,
Appellees.

No. 342

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF ON BEHALF OF ATLANTIC COAST LINE RAILROAD COMPANY

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February 5, 1934.

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BRIEF ON BEHALF OF

ATLANTIC COAST LINE RAILROAD COMPANY

PART ONE

I.

REFERENCE TO OFFICIAL REPORTS AND OPINIONS IN THIS CAUSE

1. Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, 146 I. C. C. 717, decided August 2, 1928, (R-Vol. I, p. 16 in cases Nos. 16, 17, and 18, October term, 1930, 282 U. S. 194).

2. Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, 186 I. C. C. 157, decided July 5, 1932 (R-Vol. I, p. 27).

3. Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, 190 I. C. C. 588, decided January 9, 1933 (R-Vol. I, p. 361).

   (The above mentioned three decisions are set out in full beginning at page 59 of the Statement of the Atlantic Coast Line Railroad Company Opposing Jurisdiction and Motion To Dismiss Or Affirm, filed in this cause).

4. Florida v. United States, 30 Fed. (2d) 116, decided Jan. 17, 1929.

5. Florida v. United States, 31 Fed. (2d) 580, decided March 22, 1929.

6. Florida v. United States, 4 Fed. Sup. 477, decided Feb. 24, 1933.

   (Copy of the findings of fact and conclusions of law in No. 6 above, is set out beginning at page 34 as an appendix to the Statement of the Atlantic Coast Line Railroad Company Opposing Jurisdiction and Motion To Dismiss Or Affirm, filed in this cause; also R-Vol. I, p. 610).

7. Florida v. United States, 282 U. S. 194, decided January 5, 1931.

8. By stipulation it was agreed that the printed transcript of record in the case of State of Florida, et al v. United States, et al, and the companion cases (Nos. 16, 17 and 18, October term, 1930 in the Supreme Court of the United States, the opinion in which is reported in 282 U. S. 194) comprising the proceedings before the Interstate Commerce Commission in its docket No. 18364 prior to the time of said decision of the Supreme Court, might be transmitted to the Supreme Court of the United States in this cause instead of a transcript thereof. (R.-Vol. I, p. 607).

9. Order of consolidation, February 24, 1933—the three cases: State of Florida, et al v. United States, et al, No. 690; Wilson Cypress Co. and Wilson Lumber Co. of Florida v. United States, et al, No. 691; and F. S. Buffum Co., Inc. v. United States, et al, No. 695, were consolidated "into one bill under the style first above stated and that the case hereafter proceed as a single cause." (R-Vol. I, pp. 390, 604, 607).

II.

STATEMENT OF THE CASE

The subject matter of this case is a continuation of the controversy dealt with in the case of *State of Florida, et al v. United States, et al*, 282 *U. S.* 194.

The matter involved is a final decree of the United States District Court for the Northern District of Georgia, (three judges sitting—Mr. Circuit Judge Sibley, Mr. District Judge Underwood and Mr. District Judge Strum). The decree was entered on February 24, 1933 (R-Vol. I, p. 610—copy of the findings of fact and conclusions of law and the decree is set out in full as an appendix beginning at page 34 of the Statement of Atlantic Coast Line Railroad Company Opposing Jurisdiction and Motion to Dismiss or Affirm).

The controversy involves intrastate rates on logs more than six feet in length except walnut, cherry and cedar, moving in intrastate commerce in carload lots over the lines of the Atlantic Coast Line Railroad Company in Florida for distances not exceeding 170 miles.

The Interstate Commerce Commission found that:

> "The intrastate rates on logs over 6 feet in length, except walnut, cherry, and cedar, applicable between points on the Atlantic Coast Line in Florida for distances of 170 miles and less are, and for the future will be, unjustly discriminatory against interstate commerce, and that such unjust discrimination can be and should be removed by the establishment between all points on the Atlantic Coast Line in Florida for distances of 170 miles

or less of rates not less than the rates shown for such distances in Appendix F hereto, which are the rates found reasonable for interstate application from northern Florida to Georgia." (186 I. C. C. 189).

The effect of the decree of the United States District Court for the Northern District of Georgia, which is the subject matter of this appeal, was to sustain the aforesaid order of the Interstate Commission; that is to sustain the finding of the Interstate Commerce Commission that the Florida intrastate rates complained of—the Cummer scale of rates—worked unjust discrimination against interstate commerce to such an extent that it should be removed by another and different scale of rates.

III.

HISTORY OF THE LITIGATION

First Hearing Before the Interstate Commission.

The case originated before the Interstate Commerce Commission in a petition which was filed by the Georgia Public Service Commission against the Atlantic Coast Line Railroad Company, known as the Commission's docket No. 18364, reported in 146 I. C. C. beginning at 717. The petition was filed on May 3, 1926 and decided by the Commission on August 2, 1928. It then became the subject matter of litigation in the case reported as *Florida v. United States*, 30 *Federal* (2d) 116 (*January* 17, 1929). The United States District Court in that case sustained the order of the Interstate Commerce Commission but limited its application. Subsequently the Interstate Commission amended its order by declaring in effect that it should have state-wide application in Florida; and on supplemental bills the District Court sustained the Commission's order as thus construed by the Commission. [*Florida v. United States*, 31 *Federal* (2d) 580, *March* 22, 1929].

This court reversed the District Court by its decision entered January 5, 1931—*Florida v. United States*, 282 *U. S.* 194. In its opinion reversing the lower court, this court stated among other things as follows:

> "The question is not merely one of the absence of elaboration or of a suitably complete statement of the grounds of the Commission's determination, to the importance of which this Court has recently adverted (*The Beaumont Sour Lake & Western Railway Company v.*

United, ante, p. 74), but the lack of the basic or essential findings required to support the Commission's order. In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body and the Court examines the evidence not to make findings for the Commission but to ascertain whether its findings are properly supported. If the facts as to intrastate transportation of logs in Florida are such as to justify an order as to intrastate rates in order to end an unjust discrimination against interstate commerce either as between persons and localities, or because of an undue burden upon the revenues of the carrier, the Interstate Commerce Commission is still at liberty, acting in accordance with the authority conferred by the statute, to make such determinations as the situation may require."

The Atlantic Coast Line Railroad Company filed its petition with the Interstate Commerce Commission to reopen the proceedings praying, among other things, that the "Commission proceed to make such further findings and issue such further reports and orders in this cause as it may deem to be requisite or necessary;" and that "it prescribe such intrastate rates in Florida for the transportation of logs over the lines of this movant, for distances up to 170 miles and for distances beyond 170 miles, as may be lawful." There were prayers for such other and further reports, findings and orders as the Commission might deem proper.

The Georgia Public Service Commission also filed a like petition.

The Interstate Commission granted the prayers of those petitions and reopened the case for further hearing.

In its first report rendered August 2, 1928, the Commission had stated that:

> "We further find that the Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interestate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce.
>
> "We further find that said undue preference and advantage, undue prejudice, and unjust discrimination can and should be removed by the establishment of rates for intrastate application within Florida which shall correspond with the rates herein found reasonable for interstate application from Florida to Georgia." (146 I. C. C. 724:5).

The intrastate rates there prescribed are the same as those which were prescribed in the order which is the subject matter of this case.

SECOND HEARING BEFORE THE COMMISSION—
FIRST REOPENED HEARING UNDER
ITS ORDER OF APRIL 6, 1931.

The Commission had additional hearings in the reopened case and a large amount of new evidence was taken. The hearings were had before the Interstate Commission's examiners. The first hearing on June 10, 11 and 12, 1931, at Jacksonville, Florida, was adjourned to the City of Washington and further testimony taken on July 20 and 21, 1931.

The report of the evidence in this reopened proceeding begins in the record at page 621 of Vol. I and extends through page 915 of Volume II.

The Commission's examiners filed their proposed report. Exceptions were filed thereto and arguments had thereon before the full Commission. Thereafter and on July 5, 1932, the Commission made its second report and entered its order (186 I. C. C. 157, R-Vol. I, p. 27—this report is reproduced at page 59 of the Statement of the Atlantic Coast Line Railroad Company Opposing Jurisdiction and Motion to Dismiss or Affirm).

The evidence before the Commission in this reopened proceeding, of course, included that which had been offered in the original hearing and, as well, all of the additional evidence which was adduced at the long and tedious hearings which followed.

In its second report the Commission, as we shall show, carefully followed the decision of this court which reversed the United States District Court's opinion upholding the Commission's original report and order (282 U. S. 194).

The Commission in its second report (186 I. C. C. 189) made the findings referred to, to the effect that the Cummer scale of rates was, and for the future would be, unjustly discriminatory against interstate commerce, and prescribed rates for use to remove the unjust discrimination so found. The Commission stated that rates "not less than" those rates were necessary to remove that condition. (146 I. C. C. 717).

The Commission in its second report made a great many detailed findings, which will be more particularly referred to

hereinafter. These, we contend, fully comply with the requirements of the law as declared by this court, and especially as stated in the case of Florida v. United States, 282 U. S. 194.

The Brooks-Scanlon Corp., Wilson Cypress Company and Wilson Lumber Company of Florida on August 10, 1932 moved the Commission for a postponement to November 15, 1932 of the effective date of its order of July 5, 1932, as amended July 28, 1932. That was denied (R-1240).

A petition for further hearing in, and reconsideration of, the proceeding before the Commission was filed by the same intervenors on August 17, 1932 (R-1243). The State of Florida and the Florida Railroad Commission filed a like petition August 23, 1932 (R-1273); and these petitions were denied August 25, 1932 by the Interstate Commission (R-1278-9).

On September 9th, 1932, State of Florida, et al filed the bill in case No. 690 in the United States District Court (R-1). The Atlantic Coast Line intervened in said case (R-312) moved to dismiss same and answered the bill (R-312-13). The Interstate Commission filed its answer to said bill (R-328) and the United States filed its answer thereto (R-335).

On the same day Wilson Cypress Company and Wilson Lumber Company of Florida filed their bill of complaint in case No. 691 (R-419), in which the Atlantic Coast Line intervened (R-443). The Coast Line moved to dismiss that bill and answered the same (R-443). The Interstate Commission filed its answer to said bill (R-456) and so did the United States (R-462).

Hearing was had on said two bills on September 14, 1932. The court, acting upon its statutory authority, temporarily

suspended the order of the Interstate Commission of July 5, 1932 as amended by its order of July 28, 1932, for a period of sixty days (R-460).

On October 5, 1932 Wilson Cypress Company and Wilson Lumber Company filed with the Interstate Commission a petition for further hearing and reconsideration on the ground of newly discovered evidence (R-1280) to which the Atlantic Coast Line replied (R-1286).

On October 8, 1932 the State of Florida and Florida Railroad Commission filed a like petition (R-1293) to which the Coast Line replied (R-1309).

On October 10, 1932 a petition of intervention and for further hearing in this cause before the Interstate Commission was filed by F. S. Buffum, Inc. (R-1301) to which the Coast Line replied (R-1309).

During the sixty-day period of suspension by the court of the order of the Interstate Commission entered July 5, 1932, F. S. Buffum Company, Inc. on October 14, 1932 filed its bill in case No. 695 in the United States District Court (R-527). This bill sought to have said order of the Interstate Commission entered on July 5, 1932 set aside because it was alleged to have been "without warrant in law" (R-548). That bill remained, for the time being inactive.

On October 21, 1932 (R-1315-16) the Interstate Commission reopened the proceedings before it and ordered a further hearing

> "for the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the

last hearing herein, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of defendant."

The Commission allowed F. S. Buffum Company to intervene and be treated as a party to the proceeding.

THIRD HEARING BEFORE THE COMMISSION—SECOND REOPENED HEARING.

Further hearing was had on this second reopened proceeding before the Commission and a great deal of evidence was received. This evidence begins at record p. 917 of Volume II and ends at page 1074.

The Commission filed its third report and order January 9, 1933 (R-361), stating (R-375-6):

> "We affirm all of the findings in our prior report on further hearing and will vacate our order suspending the operation of our order of July 5, 1932, as amended."

The Commission on that date revoked its order filed on October 21, 1932, suspending the order of July 5, 1932 as amended July 28, 1932, that revocation to take effect as of February 11, 1933, and ordered that:

> "Thereafter the aforesaid order of July 5, 1932, as amended by order of July 28, 1932, shall remain in full force and effect until the further order of the commission." (R-377).

On January 19th the Commission entered an order of clarification of the last above mentioned order (January 9, 1933),

directing, in substance, that its order of January 9, 1933 should go into effect February 25, 1933 (R-377).

State of Florida and its Railroad Commission, on February 4, 1933 filed a motion to set aside the last order of the Commission; that is, its order of January 9, 1933, as amended January 19, 1933, and which was to become effective February 25, 1933 (R-378). A like petition was filed by Wilson Cypress Company and Wilson Lumber Company of Florida (R-481). F. S. Buffum Co., Inc. filed a like petition (R-558). The Coast Line replied to those motions (R-1377) and so did the Georgia Public Service Commission (R-1378).

On February 13, 1933 the Commission denied those motions (R-1377).

SUPPLEMENTAL BILLS OF COMPLAINT.

(a) Supplemental bill in case No. 690 was filed by the State of Florida through its attorney-general, Railroad Commissioners, and special counsel on February 24, 1933 (R-339). Answer to this supplemental bill was filed by the United States Government (R-390). The Coast Line moved to dismiss that bill (R-394) and also filed an answer thereto (R-397). Georgia Public Service Commission filed a petition to intervene in said case (R-415) and a motion to deny the right to file the supplemental bill (R-415) and an answer thereto (R-417).

(b) On the same day Wilson Cypress Company and Wilson Lumber Company of Florida filed a like supplemental bill in case No. 691 (R-465) to which the United States re-

plied (R-491). The Interstate Commission replied to this supplemental bill (R-495) and it was agreed that the Commission's answer to this supplemental bill in case No. 691 should stand for its answer to the supplemental bills filed in cases No. 690 and 695 (R-494).

The Coast Line moved the court to deny the motion of the plaintiffs in this case to file the supplemental bill (R-504) and also filed its answer thereto (R-506).

The Georgia Public Service Commission intervened in this case (R-523); filed its motion to deny motion of plaintiffs to file supplemental bill (R-524) and filed its answer to said supplemental bill (R-525).

(c) On February 13, 1933 the F. S. Buffum Co. Inc. filed its supplemental bill in case No. 695 (R-551) to which the United States filed its answer (R-579). The Atlantic Coast Line Railroad Company intervened in said case (R-582) and filed its answer to said supplemental bill (R-600). The Coast Line also filed a motion to dismiss said supplemental bill of F. S. Buffum Co. Inc. (R-596) as well as a motion to deny motion of said Buffum Co. to file its supplemental bill (R-598).

The Georgia Public Service Commission filed its motion to deny and its answer to said supplemental bill (R-603-4).

These causes were consolidated on February 24, 1933 (R-389-90).

Hearing was then had on the original and supplemental bills consolidated as aforesaid. After the hearing, the court

stated that a conclusion on the original bills had been reached at about the time the Interstate Commission suspended its order of July 5, 1932, which was the subject matter of those bills; and that they had prepared their findings of fact and conclusions of law; and that they found nothing in the supplemental bills to change those conclusions. The court filed its findings of fact and conclusions of law (R-610) and entered its decree, holding among other things, that:

> "the orders of the Interstate Commerce Commission made July 5, 1932, and the order of the Interstate Commerce Commission confirming the same made January 9, 1933, as set forth in the pleading, be and are hereby sustained, and the prayer to annul and set aside and enjoin the same is refused, and that the respondents recover of the complainants their costs in this behalf to be taxed by the clerk." (4 Fed. Sup. 477).

IV.

THE ISSUES BEFORE THIS COURT

The issues which are presented to this court in this case are as follows:

1. (a) Are the intermediate findings of the Interstate Commerce Commission sufficient to sustain its conclusion that the scale of rates (known as the Cummer scale) for the transportation of logs over six feet in length, except walnut, cherry and cedar, in carload lots, in intrastate commerce over the lines of the Atlantic Coast Line Railroad Company in Florida for distances up to 170 miles, work, and for the future will work, unjust discrimination against interstate commerce?

(b) Was the evidence before the Interstate Commerce Commission sufficient to justify those findings and that conclusion?

2. (a) Was the State of Florida, in the court proceedings, entitled to a hearing upon an independent record made under the processes of the court because of the Tenth Amendment to the Constitution of the United States?

(b) Were the other complainants in the court proceeding entitled to a de novo hearing upon the record made before the Interstate Commerce Commission?

V.

SUMMARY OF THE COMMISSION'S FINDINGS IN THE FIRST HEARING (*Georgia Public Service Commission v. Atlantic Coast Line Rd. Co.*, 146 I. C. C. 717, August 2, 1928).

The Commission's first report may be summarized as having found:

(a) The Florida Commission appeared and defended the Cummer scale of rates.

(b) There was a large volume of traffic in logs which moved under the Cummer scale; and there was a very great amount of standing timber in the territory from which the logs had been moved; that one owner had a tract of timber containing 1,207,432,000 feet.

(c) That the Cummer scale of rates "which on the average are less than half of the proposed interstate rates, are less than reasonably compensatory."

(d) That the Cummer scale of rates worked unjust discrimination against interstate commerce; and rates were prescribed to remove that unjust discrimination.

(e) The Commission fixed a scale of rates to govern interstate transportation of logs from points on the lines of the Atlantic Coast Line in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, to destinations on its lines in Georgia for distances not exceeding 170 miles.

The intrastate rates fixed by the Commission, as aforesaid, are the same as those fixed for the interstate movements.*

* The Commission also found there was discrimination against persons and places, etc. This finding was not sustained by the United States District Court, nor by this court and was not brought forward in the subsequent reports of the Commission.

VI.

ANALYSIS OF THE FIRST REPORT OF THE INTERSTATE COMMERCE COMMISSION (*Georgia Public Service Com. v. Atlantic Coast Line Rd. Co.*, 146 I. C. C. 717).

The Commission's first report made August 2, 1928 [146 I. C. C. 717 (R-Vol. I, p. 16) of cases Nos. 493, 494 and 495, October term, 1930, 282 U. S. 194—this is referred to as the first record. (Complete copy of this report is set out beginning at p. 59 of the Statement of Atlantic Coast Line Railroad Company Opposing Jurisdiction and Motion to Dismiss or Affirm, filed in this cause)], was the basis of the court's decision in the case reported in 282 U. S. 194.

Not one of the findings of the Commission there made has been disturbed by any court. It was determined by this court that this first report did not contain sufficient basic findings to sustain the Commission's order. The findings in the original report of the Commission still remain findings in the case now at bar.

The Commission found that the Florida Railroad Commission filed no formal petition of intervention but appeared in defense of the Florida intrastate rates.

The Commission traced the history of the Florida intrastate rates involved here and which are known as the "Cummer" scale of rates (146 I. C. C. 719). This is summarized in the aforementioned opinion of this court—282 U. S. at page 205.

The findings of the Commission indicate the volume of traffic. For instance, on January 26, 1914, when a contract was

made between the predecessor of Brooks-Scanlon Corporation and Atlantic Coast Line Railroad Company, the Lumber Company owned standing timber in Lafayette and Perry Counties, Florida, of approximately 1,000,000,000 feet of pine. 128,163 carloads containing 700,000,000 feet of timber had been transported under that contract from 1915-1926, both inclusive; and on August 31, 1926 the Brooks-Scanlon Corporation owned in Wakulla, Jefferson, Madison, Taylor, Lafayette and Dixie Counties, Florida, timber tracts estimated to contain 1,207,432,000 feet. The Commission's findings as to the quantity of the timber affected did not adequately reflect the extent of such timber as shown by the record.

The Commission also found (146 I. C. C. 724):

> "It is manifest, we believe, that the intrastate rates assailed, which on the average are less than half of the proposed interstate rates are less than reasonably compensatory. The rate for 160 miles yields but 4.25 mills a ton-mile, and, based on a lading of 60,200 pounds, 12.8 cents a car-mile. They are approximately one-half the rates prescribed in *Rates on Chert, Clay, Sand and Gravel*, 122 I. C. C. 133, on sand and gravel in the southeast and less than one-half of the rates prescribed in the supplemental report in that case, 140 I. C. C. 85, to points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line."

It also found:

> "Sand and gravel are of unusual low value, it being doubtful whether any traffic moves which is worth less at point of production, load very heavily, and normally move in considerable volume without unusual switching

operations at either end and without anything in the nature of special services." (146 I. C. C. 724).

The Commission further found that:

> "The Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce." (146 I. C. C. 724).

The Commission prescribed a scale of rates for the removal of that unjust discrimination.

The findings of undue preference and advantage of shippers of intrastate traffic and undue prejudice to shippers of interstate traffic were not sustained in the District Court and the case came to this court on the basis of unjust discrimination against interstate commerce.

The Commission also found that the Florida Commission advised the Atlantic Coast Line that "the rates (Cummer scale) themselves were too low and such as might be deemed confiscatory." (146 I. C. C. 720).

The evidence on which the findings of the Commission in its first report were made may be seen in exhibit 15 (first record 270, 271); exhibit 16 (first record, 272); exhibit 1 and evidence of the witness Price (first record, 232) which shows the difference between the Cummer scale and the interstate scale. For instance, at 50 miles the Cummer scale

yielded $10.50 revenue for a car of 50,000 pounds while the Georgia-Florida interstate scale yielded $25.00 for a like car; at 100 miles the Cummer scale yielded $13.00 and the interstate scale $35.00; at 170 miles the Cummer scale yielded $18.00 and the interstate scale $47.50.

Also sustained by exhibit 52 (first record, 394) witness Price, wherein comparisons are made between the Cummer scale of rates and rates over the Atlantic Coast Line in North Carolina and with rates in South Carolina, Georgia and Alabama. For instance, at 50 miles under the Cummer scale the rate was 2.10 cents per 100 pounds; under one scale in North Carolina the rate was 3.25 cents; under another scale in North Carolina, 2.7 cents; South Carolina, 5.33 cents; Georgia, 3.5 cents; and in Alabama, 4.5 cents; and interstate, 5 cents. The witness Price testified:

> "The Cummer scale is the lowest scale I have been able to locate." (First record, 706).

Mr. Price's exhibit 52 (first record, 394) is a very fair summary of the evidence given as to the comparative rates. It shows the Cummer scale of rates was always the lowest; and lower than the scales of rates interstate or intrastate in North Carolina, South Carolina, Georgia and Alabama.

Comparison of rates under the Cummer scale with rates on the Seaboard Air Line Rwy. Co. in Florida is shown in exhibit 2 (first record, 234)—the witness Abrams. At record 434 (first record) Mr. Abrams testified in substance that the Cummer scale is the lowest scale to be found and on the very lowest level; and lower even than that prescribed by the Georgia Commission but then under suspension. The Seaboard

Air Line's intrastate rates were more than twice as high as the Cummer scale of rates (Note column 4, exhibit 2, first record). The relation was even wider when compared with the interstate scales (first record, 436). The Seaboard Air Line operated about 1850 miles of road in Florida.

The same kind of results was shown in a comparison of rates on the Georgia, Southern & Florida (first record, 451) in exhibit 3 which is shown at first record, 327.

The witness Perrin (first record, 279) filed his exhibit 18 showing comparison of the Cummer scale of rates on logs with the rates on brick, sand, lime and cement. For instance, at 50 miles the rate on logs under the Cummer scale was 2.10 cents per 100 pounds; on brick, 5 cents; on sand and gravel, 4.30 cents; on lime, 7.90 cents and on cement, 8.45 cents. The Cummer scale was from one-third to one-half of the scales on those other low-grade commodities. At 50 miles the Cummer scale was only 40% of the corresponding interstate scale.

Exhibit 22 of the witness Perrin (first record, 287) shows that logs constituted 7.26% of all the tonnage on the Atlantic Coast Line in May, 1926 and under the Cummer scale they produced 2.05% of all the freight revenue; and that the revenue per ton from the log traffic was only seventy-two cents, which was about one-third of the revenue yield on fertilizer and cement; less than a fourth of the revenue from salt and asphalt; about sixty per cent of the revenue from stone; less than one-half of the revenue from cotton seed and cotton seed hulls. The average log haul was 109 miles and the revenue per ton mile was .0066. Perrin's exhibits begin with exhibit No. 10 (first record, 255) and end with No. 24 (first record,

291). His oral evidence begins at first record, 467 and ends at first record, 715.

We thus see that the findings of the Commission referred to were amply supported by the evidence. The case was not reversed by this court on account of the lack of evidence. It was reversed as we have seen, for the reason that what may be called intermediate findings of the Commission were not sufficient to sustain its final finding of unjust discrimination against interstate commerce. The findings of the Commission remain a part of the record on which this case was tried.

VII.

SUMMARY OF THE COMMISSION'S FINDINGS IN THE SECOND HEARING (*Georgia Public Service Commission v. Atlantic Coast Line R. Rd. Co.*, 186 I. C. C. 157, decided July 5, 1932).

The findings of the Commission in the second hearing may be summarized as follows:

1. Affirmance of every intermediate and basic finding made by the Commission in the first report (146 I. C. C. 717), except the finding of undue prejudice against persons and localities in interstate commerce, which finding the Commission held to be unnecessary (186 I. C. C. 189-90).

2. The *interstate* scale of rates prescribed heretofore as reasonable for the transportation of logs is affirmed (186 I. C. C. 160, 189).

3. The Cummer scale of intrastate rates for the transportation of logs in Florida is found to work *unjust and undue discrimination* against interstate commerce (186 I. C. C. 189).

(a) This scale of rates only involves distances up to and including 170 miles and is applicable only on the railroad of the Atlantic Coast Line (186 I. C. C. 161).

(b) The Southern Florida peninsula warrants a higher rate on all commodities than elsewhere, due to transportation conditions (186 I. C. C. 163-64).

(c) The Class P rates applicable on logs moving in Florida for 171 miles is twice as high as the Cummer

scale for 170 miles, the difference being 8.37 cents per 100 pounds and 3.70 cents per 100 pounds, respectively (186 I. C. C. 161 and 193).

(d) Comparisons of *intrastate* rates on other Florida railroads show the Cummer scale is only about 50 per cent. as high (186 I. C. C. 163 and 193).

(e) The *interstate* rate scale prescribed by the Interstate Commerce Commission applies over the Coast Line's lines throughout the entire southern territory in interstate commerce and is the same as the intrastate rates in Alabama and Virginia. It compares favorably with the *intrastate* rates in Georgia, North Carolina and South Carolina, and would be fully applicable but for this litigation (186 I. C. C. 162-63-67 and 193). This scale, or one that compares favorably with it, applies interstate over the lines of the other important carriers in the South (186 I. C. C. 163). It is lower than similar rates found reasonable for the Central territory (186 I. C. C. 164). There is no lower scale of rates on logs than the Cummer scale, intra or interstate (186 I. C. C. 165).

(f) The Cummer scale is lower than rates on other important low-grade commodities such as brick, sand, gravel, lime and cement (186 I. C. C. 165 and Appendix D, 195).

(g) The Cummer scale is "less than reasonably compensatory" (186 I. C. C. 165).

4. The *revenue* from the log traffic reflects "the small revenue burden borne by the log traffic" as compared with other traffic (186 I. C. C. 166-67—see table).

5. The decline in the log traffic during the period 1928-1930 is not solely due to increase of the rates above the Cummer scale (186 I. C. C. 168-69) but is partly due to

(a) Removal of certain of the mills to the timber, which was testified to be necessary because it was uneconomical for mills to be located so far from the timber even if the Cummer scale were in force (186 I. C. C. 169).

(b) General depressed conditions as they affected the lumber industry (186 I. C. C. 171).

(c) The decline in the system traffic and the decline in the lumber and other commodity traffic throughout the United States (186 I. C. C. 171-2).

6. There is a great quantity of timber in Florida yet to be cut and transported (more than 21,000,000,000 feet were accounted for) and the regrowth of Southern pine timber is very rapid (186 I. C. C. 172-76). The traffic for the future in this commodity will be large and much of it is adjacent to the lines of the Atlantic Coast Line (186 I. C. C. 176).

7. There is little likelihood of serious truck competition (186 I. C. C. 176).

8. The *revenue* from the Cummer scale does not cover the "*cost of the service*" (186 I. C. C. 176-187).

(a) Even when considering that the movement of considerable log traffic in Florida was in trainloads (186 I. C. C. 183 and 185), which was not approved even by the Florida Commission, as a basis for rates, (186 I. C. C. 161).

(b) The cost evidence introduced by the carrier was not contradicted, but only criticised by the shippers (186 I. C. C. 182).

(c) If the Cummer scale had been applicable on the log shipments moving in Florida from February 8, 1929, to January 31, 1931, the revenue would have been $290,283.19 less than that collected under the scale prescribed by the Interstate Commission applicable during that period. (186 I. C. C. 167). If the Cummer scale had been applicable on all the log movements over the Atlantic Coast Line during the years 1929 and 1930, the reduction in revenue would have been approximately $675,381.21 (186 I. C. C. 168).

9. *"Traffic moving under the Cummer scale does not pay its 'fair proportionate share' of operation and maintenance alone"* (186 I. C. C. 187).

10. An increase of the Cummer scale of rates would, and for the future will, produce additional income and remove the burden found to exist upon the carriers' interstate income (186 I. C. C. 189-90).

(a) "It is manifest that if the Cummer scale produces less revenue than the cost of service, declines in the traffic have the favorable effect of reducing defendants' losses, and that an increase in the traffic would only serve to augment those losses" (186 I. C. C. 176-77).

(b) The Commission also finds (186 I. C. C. 170) that the defendant asserts that the change in location of these mills from the vicinity of Jacksonville to Foley and Cross City has had a favorable effect upon its revenues in two respects, first, it has rendered unnecessary the transportation of the logs at

the inadequate remuneration yielded by the Cummer scale; second, the present location of the mills in the interior has resulted in producing tonnage of lumber rather than of logs, and the transportation of lumber from the standpoint of net revenue is vastly better than the transportation of logs under the Cummer scale. The Commission then proceeds to point out that the average weight of 983 cars of logs handled under the Cummer scale for the Brooks-Scanlon Corporation and the Putnam Lumber Company was 60,200 pounds per car, the average haul was 158 miles, and the revenue was $20.47 per car, or 12.9 cents per car-mile. In 1930, 90 per cent. of the lumber movement from Foley and 70 per cent. of the lumber movement from Cross City to destinations on defendant's lines went to Jacksonville. The rate on lumber from Foley to Jacksonville is 9.14 cents and based on the average per car weight of all lumber in the southern region of 52,000 pounds, the revenue per car from Foley to Jacksonville, 169 miles, is $47.53, which equals 28.1 cents per car-mile. The rate on lumber from Cross City to Jacksonville, 118 miles is 8 1/3 cents, producing revenue of $43.33 per car or 36.7 cents per car-mile.

11. Circumstances and conditions surrounding the log transportation *intrastate* in Florida are not as favorable as those *interstate* over the lines of the Atlantic Coast Line (186 I. C. C. 189).

12. The scale of *minimum* rates for intrastate transportation of logs in Florida for distances not over 170 miles, set forth in Appendix F, is found reasonable and sufficient to remove the unjust discrimination against interstate commerce caused by the application heretofore of the Cummer scale (186 I. C. C. 189, 190, 198).

VIII.

ANALYSIS OF THE SECOND REPORT OF THE INTERSTATE COMMERCE COMMISSION (*Georgia Public Service Com. v. Atlantic Coast Line Rd. Co.*, 186 I. C. C. 157).

The second hearing was had on the separate motions of the Georgia Public Service Commission and the Atlantic Coast Line Railroad Company to reopen the proceedings before the Interstate Commission. This is referred to in Volume I of the record, p. 9, ¶19, of the bill of the State of Florida in case No. 690. The Georgia Public Service Commission moved the Interstate Commission, as shown in the aforementioned bill, to reopen the proceedings and make the determinations required by the situation and to issue such report and make such findings and orders "as will result in removing the discriminations set out in the original petition." The motion also prayed the Commission to make such findings and issue such orders as it may deem requisite or necessary "to fully accomplish the purpose of the original petition and of this motion," and that the Interstate Commerce Commission prescribe just, reasonable, non-discriminatory and non-prejudicial interstate rates from all "points in Florida to all destinations in Georgia and that the measure of such rates be no higher than the rates concurrently in effect for the same kind of property moving in intrastate commerce in the State of Florida."

The motion of the Atlantic Coast Line Railroad Company is referred to on page 10 of volume I of the record. This motion prayed that the

"Commission proceed to make such further findings and issue such further reports and orders in this cause as it may deem to be requisite or necessary;

"That the Commission prescribe such intrastate rates in Florida for the transportation of logs over the lines of this movant, for distances up to 170 miles and for distances beyond said 170 miles, as may be lawful.

"That this Commission issue such other and further reports, findings and orders as this Commission may deem proper."

The point is made that the reopened proceeding before the Interstate Commission was not one in which it was asserted that the level of the State rates was so low as to constitute a revenue burden on interstate commerce.

The same point was made in the case of *Florida v. United States*, 30 Fed. (2d) 116, and in the reopened proceeding, *Florida v. United States*, 31 Fed (2d) 580. It was made in this court on the first appeal—*Florida v. United States*, 282 U. S. at page 209—and was disposed of against the contentions of the appellants.

In the court below in its conclusions of law and fact (R-610, at 614, and at page 38 of the Statement of the Atlantic Coast Line Railroad Company Opposing Jurisdiction and Motion to Dismiss or Affirm) the court adhered to its views expressed in the first two cases to which reference has been made; and also referred to and cited the opinion of this court in 282 U. S. at page 209, to the same effect.

We respectfully submit that there is no merit in the position taken by the appellants.

The State of Florida through its Attorney-General, and the Florida Railroad Commission, through its special counsel, appeared in the reopened case before the Interstate Commission (186 I. C. C. 157).

The Commission finds (186 I. C. C. 160) that the interstate rates which went into effect on February 8, 1929

> "have since remained continuously in force. No further evidence was introduced with respect to their reasonableness and they are apparently satisfactory to all interested parties."

This is undisputed.

The Commission found the principal issue in the reopened case to be as follows:

> "The principal issue upon rehearing was whether the Cummer scale causes unjust discrimination against interstate commerce and that issue will now be considered." (186 I. C. C. 160).

The interstate and intrastate rates prescribed applied for distances only up to and including 170 miles.

> "There was no occasion to prescribe either interstate or intrastate rates for greater distances, for the reason that the intrastate (Cummer scale) rates, which were alleged to cause the undue prejudice against shippers and localities in interstate commerce and unjust discrimination against interstate commerce, applied for distances of only 170 miles and less, beyond which the Florida intrastate rates were much higher, distance considered, and were only slightly less than the then prevailing interstate log rates for the same distance." (186 I. C. C. 160).

The Commission again briefly traced the history of the Cummer scale of rates and states:

> "The Cummer scale never has applied over other railroads nor elsewhere than in Florida on defendant's lines for distances of 170 miles and less." (186 I. C. C. 161).

The Commission in Appendix B to its report (186 I. C. C. 193) showed the Cummer scale which began with a rate of 1.71 cents per 100 pounds for 5 miles and ended with 3.7 cents for 170 miles. Above 170 miles, in column 1, the rates are Class P and they are very much higher than the Cummer scale. For instance at 170 miles the Cummer scale is 3.7 cents per 100 pounds and for 171 miles the Class P rate is 8.33 cents per 100 pounds, or "more than twice as high." (186 I. C. C. 161).

Transportation conditions in that portion of Florida south of the line of the Seaboard Air Line extending from Jacksonville to River Junction warrant a basis of class rates substantially 15 per cent higher than the rates in other parts of the South (186 I. C. C. 161).

Appendix B, referred to, makes comparisons of the Cummer scale of rates with the rates on so-called short logs; that is logs not over six feet in length, and rates on the Seaboard Air Line, Georgia, Southern & Florida and a number of other lines; and the great disparity between the Cummer scale and the other scales is shown.

The Alabama Commission had adopted the interstate scale for intrastate commerce within its boundaries.

"The Georgia Commission likewise adopted it for intrastate application in that State, but suspended its application because of the existence of the Cummer scale in Florida. The Corporation Commission of Virginia approved the scale for application on defendant's lines in Virginia and it is now in effect in that state. The scale, extended to cover distances up to 450 miles, was proposed by defendant for adoption in this case at the original hearings and defendant expressed willingness to establish it for interstate application over its entire system except south Florida. Although the former order prescribed the scale only from northern Florida to Georgia for distances of 170 miles and less, the defendant later voluntarily established it for uniform application on interstate traffic for all distances over its entire system except from points on its line south of the line of the Seaboard Air Line from Jacksonville to River Junction, from which it established rates 15 per cent higher than from points north of that line. In nearly all instances these rates were reductions from those previously in force." (186 I. C. C. 162).

The rates applying on logs intrastate in Florida on the Seaboard Air Line and the Georgia, Southern and Florida "are approximately twice as high as the Cummer scale." (186 I. C. C. 162, and appendix B).

The rates over the Atlantic Coast Line and the Seaboard Air Line on logs not more than six feet in length were substantially higher than the Cummer scale of rates. The Commission states:

"These rates were established to permit the movements of short logs which would otherwise go to waste, but which could be used by manufacturers of crates. This scale is somewhat lower than the scale prescribed in the

original report herein but is substantially higher than the Cummer scale." (186 I. C. C. 162).

The Commission finds (186 I. C. C. 163) that:

> "Some southern lines, particularly those operating in the Mississippi Valley, have two scales of log rates, one for ordinary local application, and the other, a scale of net transit or reshipping rates, applying when a certain proportion of the lumber or other manufactured product is shipped over the lines of the carrier delivering the logs. The net transit or reshipping rates are usually lower than the local rates. The interstate net transit scale of the Illinois Central and Mobile & Ohio is typical of such scales. It is shown in column 7 of Appendix B, and is considerably lower than the interstate local scales applying on those lines, which are shown in columns 8 and 9. This net transit scale, except for distances under 20 miles, is more than twice as high as the Cummer scale and compares favorably with the scale prescribed in the original report herein (column 5). The latter scale, hereinafter referred to as defendant's interstate scale, now applies interstate generally between points not only on defendant's lines but also on the Seaboard Air Line and the Southern, and as net transit rates on the Louisville & Nashville. It will thus be seen that this scale or one that compares favorably with it, applies interstate over the lines of the most important carriers in the South. In *Farris Hardwood Lumber Co. v. Louisville & N. R. Co.* 178 I. C. C. 671, division 4 prescribed gross (local) rates on logs from numerous origins in the South to destinations in Tennessee, which rates are considerably higher than defendant's interstate scale. The single-line scale prescribed in that case is shown in column 6 of Appendix B."

This finding of the Commission is sustained by the evidence of J. W. Perrin (R-650, vol. I; and by his exhibits 54,

R-1100a; 63, R-1110; 64, R-1111-12; 65, R-1112-13; 68, R-1119).

The Commission attaches appendix C to its report (186 I. C. C. 194) comparing the Cummer scale of rates with rates in Virginia, North Carolina, South Carolina, Georgia transit, Georgia local and in Alabama, and states:

> "In Appendix C the Cummer scale is compared with defendant's intrastate log rates in other southern states. It will be noted that the rates applicable in Virginia and Alabama, which were approved by the regulatory bodies of those states, are the same as defendant's interstate scale; that in Georgia the local rates are somewhat higher and the transit rates somewhat lower than defendant's interstate scale; and that the North Carolina and South Carolina rates are somewhat lower than defendant's interstate scale but average considerably higher than the Cummer scale. Applications are pending before the proper authorities to permit the establishment of defendant's interstate scale uniformly on intrastate traffic throughout those states, approval of which, it is testified, has been withheld because of the low intrastate rates in Florida." (186 I. C. C. 163).

There is no controversy over this statement and these conditions are dealt with and the finding of the Commission sustained by the evidence of the witness Perrin (R-651 and 664 and Perrin's exhibit 63). At R-664 Mr. Perrin showed that

> "the Cummer scale is 48.1% of the Virginia scale; 59% of the North Carolina scale; 52.8% of the South Carolina scale; 56.4% of the transit scale in Georgia; and 45.9% of the Alabama scale which is the same as our interstate scale."

This was a mathematical average of the scale for all distances.

The Commission then finds (186 I. C. C. 163) that:

> "Transportation conditions in Florida are not such as warrant a lower basis of rates on logs in that state than elsewhere on defendant's system. Transportation conditions on defendant's lines in Florida are not more favorable but on the contrary are less favorable than on defendant's system outside of Florida. The cost of service in Florida is higher than on the remainder of the system, as shown by cost evidence referred to in detail hereinafter. Density of traffic in Florida is much lighter than on defendant's lines elsewhere." (186 I. C. C. 164).

This is amply sustained as to the transportation conditions in Florida by the witness Perrin (R-652-3, 663-4; and 488, first record). As to the finding that the cost of rendering service in Florida is higher than for the remainder of the System that is shown by the witness Lamb in his exhibit 82 (R-1135) and by his evidence (R-692-3). For the calendar year 1927 the average number of revenue ton-miles in south Florida was 90.57% of the ton-miles in north Florida. In Lamb's exhibit 83 (R-1136-a) there is an elaborate statement as to traffic density statistics in the State of Florida as compared with the System and the System excluding Florida for the calendar years 1925-1930. The figures used by the Commission in its report 186 I. C. C. at page 164 dealing with the traffic density, are taken from Lamb's exhibit 83 and his evidence (R-693). For instance, in 1929 the miles of road operated in Florida were 2055.40 and those operated on the balance of the System, excluding Florida were 3096.20. The Florida mileage represented 66.44% of the System mileage, excluding Florida, yet the tons moving one mile in Florida represented only 33.4% of the System excluding Florida.

In 1930 the Florida mileage was 66.6% of the System mileage, excluding Florida and the ton-miles of revenue freight produced only 38% of the System excluding Florida and the tons moved one mile per mile of road in Florida were 369,979 as compared with 648,395 for the System, excluding Florida (R-693).

The witness Lamb testified:

> "These figures indicate the low density of traffic in Florida as compared with the system of the Coast Line outside of Florida."

The same kind of relationship appears in Lamb's exhibit 83½ (R-1136a) as to the Seaboard Air Line. The witness Lamb testified at R-694:

> "I have attempted to develop whether or not the cost of operation in Florida is really greater than the cost on other parts of the Atlantic Coast Line, and from this study it would appear that the cost on the third division, which operates exclusively in the State of Florida, is considerably higher per unit than the cost on the first and second divisions operated north of Jacksonville."

The witness then goes into an elaborate statement of accounting which will be hereinafter referred to.

The Commission then finds (186 I. C. C. 164) that:

> "In the Florida peninsula the traffic density is even lighter than in the northern part of Florida, that is, north of the Jacksonville-River Junction line of the Seaboard Air Line. In 1927 there were 894.54 miles of railroad in Florida north of that line that were operated for freight traffic, and 4,183.01 miles in Florida south of that line. The traffic density of the lines in Florida

north of that line was 615,318 revenue ton-miles per mile of railroad as compared with 557,286 revenue ton-miles per mile of railroad south of that line. The less favorable operating conditions in Florida south of that line have given rise to the general practice of permitting the addition of arbitraries to the rates on interstate traffic to and from points in that territory."

The Commission cites *Southern Class Rate Investigation*, 100 I. C. C. 513, 585, 626, 646; 128 I. C. C. 567, 594, 602.

The Commission then finds (186 I. C. C. 164-5) that:

"The Cummer scale is much lower than the basis of rates prescribed for application throughout central territory in *Indiana Public Service Commission v. A. A. R. Co.*, 85 I. C. C. 533. Rates equal to 65 per cent. of the sixth-class rates contemprancously in effect between the same points were there found to be reasonable rates. The order there entered resulted in rates on logs ranging from 5.20 cents for 5 miles to 20.80 cents for 560 miles, the rate for 170 miles being 12.35 cents, whereas the Cummer scale rates for 5 miles and 170 miles are 1.71 cents and 3.70 cents, respectively. The report in that case referred to 'the lower operating costs and the greater traffic density' in central territory than in southern territory."

This is sustained by defendant's exhibit 67 (R-1117) and testimony of the witness Perrin explaining that exhibit (R-668). To illustrate: as shown by this exhibit and the testimony, at 25 miles the Cummer scale was 1.71 cents per 100 pounds; the interstate scale 3.5 cents; in Central territory, 6.50 cents; and in Souther nterritory, when ascertained upon a basis equivalent to 65% of Sixth Class rates, 7.88 cents. (The witness testified that 17.875% of First Class in Southern

territory was equivalent to 65% of Sixth Class in Central territory).

It is also sustained by defendant's exhibit 68 (R-1119) where the Cummer scale is compared with the interstate scale and with the Lumber scale and with 65% of the Lumber scale. To illustrate: at 25 miles the Cummer scale is 1.71 cents per 100 pounds; the interstate scale, 3.5 cents; the Lumber scale, 6.5 cents and 65% of the Lumber scale, 4.23 cents. (See evidence of the witness Perrin R-664).

The Commission then finds:

> "So far as the record in this case shows there is no other scale of rates on logs as low as the Cummer scale." (186 I. C. C. 165).

This is borne out by comparison of the exhibits and the evidence. See also statement of the witness Price (first record, 706) and statement of Mr. Abrams (434; first record).

The Commission then finds (186 I. C. C. 165) that:

> "Defendant's interstate scale and the Cummer scale are compared with the rates on other important low-grade commodities in Appendix D. The freight charges per car under the rates shown are also compared. The rates shown on these other low-grade commodities are the rates applicable between Georgia and Florida, but substantially the same level of rates applies intrastate in northern Florida. Approximately 40 per cent of the total tonnage transported by defendant consists of these low-grade commodities, and a substantial portion of defendant's total freight revenues is derived from their transportation, as is indicated by the following results of a traffic test for the month of May, 1926:

Commodity	Percentage of all tonnage	Percentage of all freight revenue	Value per ton
Logs	7.26	2.05	$2.80
Brick and artificial stone	3.30	2.32	.....
Sand and gravel....	26.49	9.16	0.35 to 1.35
Lime and plaster....	.46	.39	.....
Cement	2.29	2.05	7.48

The above evidence warrants the conclusion that the Cummer scale rates are abnormally low. Upon similar evidence submitted at the original hearing division 4 found that they are 'less than reasonably compensatory.' We affirm that finding."

This finding is sustained by defendant's exhibits 69-76 beginning at R-1120 and by the witness Perrin's evidence beginning at R-669. The witness Perrin (R-669) introduced exhibits 69-77 both inclusive (these exhibits appear at R-1120 through 1132). These exhibits compare the Cummer scale of rates on logs showing the revenue per ton-mile in mills, the revenue per car in dollars and the revenue per car-miles in cents, with the same rates and returns on charcoal, cement, old bags, hay, fertilizer, cullet (broken glass), common brick, and sand and gravel. The rates under the Cummer scale and the revenue produced by application of that scale are very much lower than are the rates applicable to the movement of the other commodities and the revenues derived from such movements. To illustrate, at 50 miles the rates on logs under the Cummer scale was 2.10 cents per 100 pounds; on old bags, 15 cents; the per ton mile revenue on logs was 8.4

mills; on old bags, 53.3 cents; return per car of 60,000 pounds on logs under Cummer scale was $12.60; on old bags for 33,000 pounds, $49.50; the revenue per car-mile on logs was 25.2 cents; on old bags, 99 cents.

Mr. Perrin states (R-669) that:

> "On all of these commodities, except the old worn out bags, the rates prescribed by the Commission have general application throughout Southern territory. Without exception the comparison is as to rates, revenue per ton mile and per car mile applicable on commodities on which the Commission, because of low value or because of other considerations stated in the exhibits has made some very low rates."

PROPERTY VALUES OF ATLANTIC COAST LINE AND THE RETURN THEREON.

The Commission finds (186 I. C. C. 166) that the Atlantic Coast Line's total property investment at the end of the year 1926 was $287,758,229; 1929, $306,439,250; and 1930, 305,977,599. The investment in property included investment in road and equipment, materials and supplies and cash. The rate of return on this investment was in 1926 6.11%; in 1929, 4.20% and in 1930, 2.37%.

This is sustained by the witness Lamb, General Auditor for the Atlantic Coast Line, who is an experienced expert accountant and statistician, beginning at R-686, and exhibit 78 (R-1134a). At R-1134b exhibit 79 shows the Atlantic Coast Line's investment in the State of Florida which increased from $95,176,163.92 in 1926 to $102,759,627.23 in 1930. The rate of return on investment in Florida in 1930 (including material, supplies and cash) was 1.17%.

The court will take cognizance of the continued depression which has very greatly adversely affected railroads since the year 1930.

PERCENTAGE OF LOG TRAFFIC IN VOLUME AND REVENUE.

The Commission finds (186 I. C. C. 166) that:

> "During the 5-year period, 1926-1930, system log traffic averaged .7 per cent of the total system traffic. Nearly 50 per cent of the system log traffic was in Florida. For instance, in 1928, the defendant transported a total of 51,801 cars of logs on its system, of which 27,119 cars were in Florida."

The rate of return on investment found by the Commission is, of course, before the deduction of interest on funded or unfunded indebtedness, or any other non-operating charge.

The Commission's finding as to the logs handled by the Atlantic Coast Line Railroad Company is sustained by exhibit 80 (R-1134c) and by the evidence of the witness Lamb (R-688).

The percentage of log traffic to total traffic of the System in 1928 was 7.0% while the percentage of log revenue to total revenue for the System was 1.9%. In 1929 it represented 5% of the total volume of traffic and the revenue was 1.5% of the total revenue; in 1930 the volume of traffic was 4.0% of the total volume and the revenue was 1.3% of the total revenue. In 1928 the percentage of Florida log traffic to total Florida traffic was 9.4%; in 1929 4.3% and in 1930

3.6%. In 1928 the number of cars of logs represented 52.35 per cent of the System and the tons, 57.26 per cent. This percentage decreased in 1929 and 1930, 1930 being 35.43 per cent as measured by cars and 40.76 per cent based on tons handled (R-688 and exhibit 80, R-1134c).

The Commission finds (186 I. C. C. 166) that:

> "The above figures reflect the small revenue burden borne by the log traffic. In 1928, for instance, the system log tonnage constituted 7 per cent of the total system tonnage, whereas the revenue from the log tonnage was only 1.9 per cent of the total revenue."

The evidence and exhibits referred to fully sustain this finding.

The Commission found that from 1928 to 1930

> "the log traffic of the system declined more than 50 per cent but the system log revenue declined only 38 per cent. The smaller decline in the revenue was no doubt due to the fact that in 1928 the Cummer scale was in effect whereas throughout 1930 the increased rates prescribed by the former order herein were collected." (186 I. C. C. 167).

The former order referred to was the order entered by the Interstate Commission in this proceeding, 146 I. C. C. 717, which order was set aside by this court in its decision in 282 U. S. 194. Apparently if the Cummer scale had been in effect in 1930 the decline in the log revenue of the System would have been much greater than it was.

STATEMENT OF LOGS MOVING INTRASTATE IN FLORIDA OVER COAST LINE FROM FEBRUARY 8, 1929 TO JANUARY 31, 1931.

The Commission also found (186 I. C. C. 167) that the defendant submitted

> "a statement showing all shipments of the kinds of logs here in question which moved over its lines intrastate in Florida during the period from February 8, 1929, to January 31, 1931. This statement shows a total movement of 18,602 carloads in that period on which gross freight revenues of $571,508.94 were collected. If the Cummer scale had applied, this movement would have produced gross freight revenues of only $281,225.75, or $290,283.19 less than those actually collected."

This finding is sustained by exhibit 61 (R-1101) which shows the names of the points of origin and the points of destination, the miles travelled, the number of cars, the weight as billed and the weight, using carload minimum of 50,000 pounds; the revenue as collected from each point of origin to each point of destination and the rate which would have been collected if the so-called Cummer scale had been applied; and by the evidence of the witness Perrin (R-661). The points of origin and destination are shown on a map — exhibit 62. There were twenty points of destination. Mr. Perrin states at R-662-3:

> "During the years 1929 and 1930 the movement of logs on our system including the long length logs in Florida, consisted of 3,450,765,300 pounds, of which the interstate movement consisted of 456,134,800 pounds, leaving intrastate movement of 2,994,630,500 pounds. The revenues from all of these logs amounted to $1,483,424.37, of which the revenue on interstate

movements amounted to $266,654.12 and the intrastate earnings amounted to $1,216,770.75. If the Cummer scale had been applicable on all of our log movement the reduction in revenues would have been approximately as follows:

Virginia, intrastate	$ 2,926.20
North Carolina, intrastate	95,804.17
South Carolina, intrastate	89,933.48
Georgia, intrastate	29,068.53
Florida, intrastate long logs	290,283.19
Alabama, intrastate	13,245.47
Interstate	144,259.88

As a summary, if the Cummer scale had been uniformly applied, the earnings of the Atlantic Coast Line would have been reduced approximately $665,520.92. These figures represent approximate losses, and they are not based upon an actual re-rating of the tonnage, except upon the long length logs in Florida, the losses on the interstate movement and on the intrastate movement other than in Florida having been arrived at on basis of the percentage that the Cummer scale is of the actual scales applied.".

There was no contradiction of the evidence given by the witness Perrin as to this matter. Exhibit 61 was checked by plaintiffs' witness H. J. Flack (R-847, et seq., and his exhibits 111-123, R-1166a-1174). This checking found only minor errors. The Commission's finding is fully justified, and in all essential respects, required.

Conditions on Atlantic Coast Line's System Do Not Justify Higher Rates Elsewhere than in Florida.

The Commission found in substance that the Coast Line averred that no condition at any point on its lines existed that would justify higher rates on logs than those applicable within the State of Florida, submitted testimony showing that the existence of low log rates in one State has an influence upon the log rates in other states, stating:

> "The record in the present case shows the influence upon the Georgia rates of the intrastate rates in Florida. In South Carolina the State Commission at first approved defendant's present interstate rates for intrastate application but later reduced them because the rates in North Carolina were lower." (186 I. C. C. 167).

This finding of the Commission is borne out by the following references to the record: Evidence of the witness Perrin (R-652-3 and 663). The finding or statement as to the rates in South Carolina is sustained by the evidence of the witness Perrin (R-664).

The Commission also finds:

> "In the case that is now before the North Carolina Commission the existence of rates between points in Virginia on a line other than defendant's is one of the principal obstacles to securing the application of defendant's uniform scale in North Carolina." 186 I. C. C. 167).

This is sustained by the witness Perrin (R-664).

The evidence heretofore quoted to the effect that if the Cummer scale had been uniformly applied in 1929 and 1930

the reduction in the Atlantic Coast Line's revenues would have been in excess of $665,000. sustains the finding of the Commission (186 I. C. C. 168) as to the reduction in revenues.

INCREASE IN RATES NOT THE ONLY CAUSE OF DECREASE IN LOG TRAFFIC.

The Commission found (186 I. C. C. 168) that:

> "The Florida interveners contend that the increase in the Florida intrastate rates has had the effect of reducing the volume of the Florida log traffic and that as a consequence there has been a decrease in the defendant's revenue from that traffic. It is true that since the original hearings in this proceeding (October, 1926, and January, 1927) there has been a decrease in the volume of the Florida intrastate log movement."

The Commission follows this finding with a table showing the number of cars and the tonnage transported therein during the five years 1926-1930. In 1926 the number of cars hauled was 36,799; in 1927, 35,415; in 1928, 27,119; in 1929, 13,207; and in 1930, 9,376.

The peak year in railroad transportation in the southeast and also in the country was 1926. There was no change in the rates in 1927 and 1928. In 1929 the change in rates was effective on February 8. The general economic depression also began in 1929 and a part of the Wilson Cypress Company burned and was closed down in that year (R-729). The depression has continued since that time and the court will

take judicial notice that there has been a great decline in the construction of buildings and in the use of heavy manufactured products. Two of the large mills had plants in the suburbs of Jacksonville, Brooks-Scanlon Corporation at Eastport and Putnam Lumber Company at Milldale and Ortega and delivered their logs, usually in trainload lots from points on the Atlantic Coast Line's Perry branch, about 166 miles west of Jacksonville. Those two mills discontinued their trainload shipments and practically all their shipments almost immediately after February 8, 1929.

Cause of Manufacturers Moving Their Plants to the Timber.

The Commission continues its report with this finding:

> "The Putnam Lumber Company then indicated its intention to abandon those mills and to develop a plant in the timber. In 1926 it acquired a mill at Bond's Mill, about 85 miles south of Jacksonville, and in 1927 and 1928 it completed the construction of two mills at Cross City, on defendant's Perry Branch. Shortly after the intrastate rates were increased in February, 1929, the Brooks-Scanlon Corporation began the construction of a mill at Foley, about 5.5 miles southwest of Perry. Upon the completion of that mill the one at Eastport was abandoned." (186 I. C. C. 169).

This finding as to the Putnam Lumber Company is borne out by the witness Fleishell (Vol. II, pp. 596, 610, 615, first record). At page 610 of the first record Mr. Fleishell testified:

"In regard to moving our tidewater plant to the woods, we don't own any properties on tidewater. We have got them under a very favorable lease, a good deal less than one per cent of the value of the dirt alone. We are moving them because we can't pay the Cummer scale log rate. We are moving them 125 miles from Jacksonville. We are moving them out near Cross City, Florida. That is right in the timber."

At page 615 of the same record the same witness testified:

"The so-called Cummer log rates in Florida are not of such a nature as to make them especially desirable where you have to draw your logs one hundred and twenty or thirty or forty miles. They are too high, and for that reason we are going to the woods, and for the reason we have our weight net going to tidewater when we get out there. On forty per cent we get nothing back for on this haul."

The last sentences evidently mean that he ships lumber rather than logs to the tidewater when his mills are in the woods and that when the mills are located at tidewater the manufacturer ships logs; that the weight of the manufactured lumber is about one-third of the weight of the logs; that is, it takes three to three and one-half carloads of logs to make one carload of lumber.

The witness F. H. Wilson testified (Vol. II, p. 580, first record):

"I would put the mill into the timber because it would be an economical way of manufacturing the timber regardless of any log rates."

At page 581 the same witness testified:

> "As to whether if you go into the timber to put in your mill and saw it, you have got an added freight rate in getting it away from there, that is not on the lumber, you may have an added freight rate, but it will be a good deal less than the freight rate on logs."

The witness J. S. Foley, then Vice-President and General Manager of the Brooks-Scanlon Corporation testified at page 661, first record:

> "It is distinctly to the advantage of the owner of the timber to locate his mill at the timber."

At the same page he testified:

> "There are further reasons why it would be more practical to operate our timber tract by a mill in the woods. There are many other economies in being located in the woods, so far as logging supply is concerned, which constitutes a large part of the total cost of producing lumber."

The Cummer Lumber Company discontinued manufacturing and selling pine lumber at Jacksonville in 1916. Mr. Arthur G. Cummer testified at Vol. II, page 567 of the first record, that the Cummer Cypress Company in 1927 was operating a saw mill plant at Lacoochee, Florida, cutting about twenty million feet of lumber a year, and was located adjacent to one tract of timber containing about 268,000,000 feet of timber. That Company owned three other tracts of timber in the same general neighborhood, one containing 23,000,000 feet, one 29,298,000, and the other about 74,860,000 feet (R-568, first record).

Mr. M. J. Scanlon of the Brooks-Scanlon Corporation testified (Vol. II, p. 698, first record):

> "Once I am there in the woods and once having absorbed the loss, I am infinitely better off. I hate to face that loss, though; that is going to give me a good many head aches."

There was no departure from this evidence which very plainly sustains the finding of the Commission and shows the mill owners thought it was uneconomical for mills to be located 166 miles from the timber even when the Cummer scale of rates were in effect.

CAUSES OF SHRINKAGE IN LOG MOVEMENTS.

The witness Perrin contended that independently of the change in the Florida log rates much of the shrinkage in the volume of log traffic was properly chargeable to the general depressed conditions tending to reduce the volume of all traffic. (R-879-80). Mr. Perrin at this place identifies his exhibit 127 (R-1179) which shows for the years 1920 to 1930 both inclusive a record of cars and tonnage of lumber, laths, shingles and box, crate and cooperage stock for the United States as a whole and for the Southern District and the tons and revenue handled by the Atlantic Coast Line during the same years. 1923 was the best of those years. The Atlantic Coast Line's lumber tonnage in 1929 as compared with 1923 fell off 20 per cent or 775,480 tons and its revenue in 1929 as compared with 1923 was reduced approximately 24 per cent. The lumber industry continued the steady decline that had been in progress for several years until climaxed by the calamities in 1930 and 1931, but that decrease in the lumber

and log traffic applied to the country as a whole and was not peculiar to Florida and could not have been due entirely to the change in the log rates in Florida. This testimony was delivered in July, 1931.

Mr. Perrin states (R-881) in substance, that the Brooks-Scanlon Corporation moved its lumber plant to the interior and discontinued its trainload movement; that the Putnam Lumber Company likewise established mills at its timber holdings and discontinued its Atlantic Coast Line train movement of logs; and that it is of record that the move was made because the manufacture of lumber in the timber was considered more economical than to pay for the transportation of the logs even under the Cummer scale. Likewise the Cummer Cypress Company at Lacoochee shifted its logging operations to its own service, which was a combination of its own log train service over its own tram and thence over the Seaboard Air Line under a trackage right; and that

> "Because of the fact that the logs formerly handled by the Atlantic Coast Line for these three large manufacturers constituted a large proportion of logs used in lumber manufacture in Florida, it is, of course, true that the discontinuance of these log train operations on the Atlantic Coast Line substantially reduced its total volume of logs transported in Florida." (R-882).

He then testified that the loss was only as to gross revenue on logs, stating:

> "As a matter of common sense, no traffic is of value from a revenue standpoint unless it yields more revenue than the cost of its handling, and our study of the result of the operation under the Cummer scale is conclusive to us that such operation yields us no profit, but, on the

contrary, resulted in an actual loss on the log traffic as a whole." (R-883).

The Commission found (186 I. C. C. 169-70):

> "During the 6-year period from 1923 to 1928 the defendant's gross revenues from the movement to Eastport averaged $309,882.60 a year. Defendant's gross revenues from the movements to the Putnam mills averaged slightly more than $200,000 a year. This movement would have been discontinued even though the Cummer scale had remained in force, since the company had decided to move its mills to the timber prior to the rate increase."

The Commission's statement as to the Putnam Lumber Company's intention to move its mills is sustained by quotations from the evidence already made. The evidence justifies the statements as to the gross revenues from the movements from Eastport and Milldale.

VOLUME OF TIMBER AND PROBABLE FUTURE VOLUME OF LOG TRAFFIC.

The Commission (186 I. C. C. 172) then takes up this subject and finds there is a great volume of standing timber; that in 1927 there remained in the eleven chief pine-producing States of the South 12,650,000 acres of virgin pine, of which 5,450,000 acres, or 43 per cent were in Florida; that in addition to that area of virgin pine, there is an area of 12,550,000 acres of cut-over pine lands in Florida, of which 3,150,000 acres have been fully or partially restocked to saw timber, and 4,300,000 acres fully or partially restocked to saplings and cordwood.

This finding is supported and sustained by the evidence of the witness Perrin [R.887 and an official bulletin of the United States Department of Agriculture (Circular 124, October 1924) entitled "Rate of Growth of Second-Growth Southern Pines in Full Stands."] That circular relates to 1927, and is exhibit 129.

The finding of the Commission is also supported by exhibit No. 130 which is "Economic Conditions in Southern Pine Territory" presented to the United States Conservation Board by the Southern Pine Association, dated July 1, 1931.

The Commission finds (186 I. C. C. 173) that the 1924 survey showed that in Florida the pine-timber stand was 21.382 billion feet of longleaf and 2.966 billion feet of shortleaf, or a total of 24.348 billion feet of pine, that the production in Florida during the six years 1925-1930 totaled 4.564 billion feet, the regrowth in those six years was 2.129 billion feet, or a net depletion of 2.435 billion feet, leaving the pine-timber stand in July, 1931, in Florida of nearly 22 billion feet; that is 21.913 billion feet. Those figures applied to pine only and not to cypress. The order of the Commission in this case applies to all logs over six feet in length, except walnut, cherry and cedar.

The witness Foley, who was President of the Brooks-Scanlon Corporation, testified that from 1915 to 1929 his company had shipped 163,245 cars of logs. They were shipped from two points of origin, Carbur and Perry. One was 160 miles and the other 166 miles from Eastport, which was the destination (R-766). The total freight paid by the Brooks-Scanlon Corporation on those logs amounted to $3,182,-952.26.

Mr. Foley also testified (R-771) as an estimate that the timber owned by the Brooks-Scanlon Corporation and the Putnam Lumber Company "and some of your South Florida timber" is about two and one-half billion feet. "That includes only the timber owned by the people whom I have mentioned." He then adds: "These people do not own all the timber in Florida. My answer of two and one-half billion is what I know is on the Coast Line."

The Wilson Cypress Company made the following shipments:

In 1926	4,233 cars
In 1927	4,754 cars
In 1928	5,531 cars
In 1929	2,140 cars
In 1930	5,142 cars
A total of	21,800 cars

and a total of $562,295.38 freight. (See the evidence of C. R. MacPherson, R-779).

The witness Fleishel, President of the Putnam Lumber Company, testified that his company had approximately a billion feet of timber adjacent to the plants at Shamrock, in Dixie County, and Bond's Mill, in Volusia County (R-744). The Putnam Lumber Company paid to the Atlantic Coast Line in freights on logs (R-747)

In 1923	$245,257.43
In 1924	242,636.24
In 1925	221,908.86

In 1926	200,014.50
In 1927 (about half year)	107,324.38
Aggregating	$1,017,141.41

MOVEMENT OF MILLS TO THE TIMBER HAS HAD FAVORABLE EFFECT ON COAST LINE.

The Commission then found (186 I. C. C. 170) that:

> "The defendant asserts that the change in location of these mills from the vicinity of Jacksonville to Foley and Cross City has had a favorable effect upon its revenues in two respects, first, it has rendered unnecessary the transportation of the logs at the inadequate remuneration yielded by the Cummer scale; second, the present location of the mills in the interior has resulted in producing tonnage of lumber rather than of logs, and the transportation of lumber from the standpoint of net revenue is vastly better than the transportation of logs under the Cummer scale."

The Commission in some detail shows that the cars of logs handled under the Cummer scale from the Brooks-Scanlon Corporation and the Putnam Lumber Company on an average haul of 158 mills, with an average weight of 60,200 pounds yielded revenue of 12.9 cents per car-mile; and that in 1930 90 per cent of the lumber movement from Foley and 70 per cent of the lumber movement from Cross City to destinations on the Coast Line's lines went to Jacksonville. The rate on lumber from Foley to Jacksonville was 9.14 cents and based on the average per car weight of all lumber in the southern region of 52,000 pounds, the lumber yielded 28.1 cents per

car-mile; while the lumber which moved from Cross City to Jacksonville yielded 36.7 cents per car-mile.

That finding is based upon the evidence of the witness Perrin (R-883) who testified that during the slack business year of 1930 the revenue that accrued on lumber from the mills at Foley to destination, on Atlantic Coast Line, and to points of interchange with its connections, if destined beyond the Coast Line's rails, amounted to $173,350.69. And similarly, the revenue on lumber from Cross City was $175,587.95, these two aggregating $348,938.64; that of the lumber movement from Foley, 79.9 per cent moved to destinations reached by the Atlantic Coast Line; and 20.1 per cent to destinations beyond the Coast Line's rails; of this movement to Foley, 90 per cent went to Jacksonville, while that that moved beyond the Coast Line's rails 76 per cent moved to points beyond Richmond, Virginia; of the lumber from Cross City, 57 per cent moved to destinations on the Coast Line, and 43 per cent to destinations beyond the Atlantic Coast Line's rails; of the movement to destinations on the Coast Line 70 per cent went to Jacksonville and 16 per cent to Tampa; of the movement to points beyond Atlantic Coast Line rails, 21.5 per cent went beyond Virginia cities, 21.3 per cent beyond Montgomery, 18.4 per cent beyond Albany and Waycross and 17.9 per cent beyond Jacksonville or Palatka. The several last named hauls are reached by the Atlantic Coast Line.

CUMMER CYPRESS COMPANY MOVED FROM OTTER CREEK BEFORE CHANGE IN RATES.

The Commission continues its findings (186 I. C. C. 170) by dealing with the movement of the Cummer Cypress Com-

pany from Otter Creek to Lacoochee which began in January, 1926, and ended May 5, 1928, which was, of course, before the original order in this case of August 2, 1928 went into effect. The Commission finds:

> "This movement ended not because of the rate increase but because of the exhaustion of the company's timber near Otter Creek."

CUMMER CYPRESS COMPANY DISCONTINUED SHIPPING FROM HOMOSASSA BECAUSE OF EXHAUSTION OF TIMBER.

The Commission then refers to the fact that the Cummer Cypress Company in January, 1929 began to ship logs from Homosassa over the Atlantic Coast Line to Otter Creek, and continued this movement after the increased intrastate rates became effective on February 8, 1929. In February, 1930 the movement from Homosassa to both Otter Creek and Lacoochee ended, "and since then the Cummer Cypress Company has shipped no logs over the defendant's lines." The Commission finds:

> "These movements were stopped in February, 1930, not because of the rate increase, for the movements continued for a year after the increase became effective, but because the timber at Homosassa was practically cut out, although some additional logs of inferior grade would probably have been cut and shipped had the Cummer scale remained in force. Its present supply of logs from timber on the Withlacoochee River is hauled over its own logging road to the Seaboard Air Line and thence over that line under trackage rights for a short distance to its mill at Lacoochee." (186 I. C. C. 170-171).

This finding is sustained by the evidence of Arthur G. Cummer of the Cummer Cypress Company (R-726, et seq.)

DECLINE IN LOG MOVEMENT NOT WHOLLY CAUSED BY INCREASE IN RATES.

The Commission finds (186 I. C. C. 171) that:

> "The decline in the Florida log movement can not be ascribed wholly to the rate advance. Part of the decline has no doubt been due to that cause but a large part has been due to the change from mill locations uneconomical because too far from the timber and cessation of movements because of exhaustion of the timber. The generally depressed conditions throughout the country, in Florida, in the lumber industry generally and in the Florida log industry have also had a marked influence upon the volume of the log movement in Florida."

This finding is amply sustained by the evidence which has been discussed.

The Commission next deals (186 I. C. C. 172) with the decline in the total system traffic and in the system log traffic of the Coast Line during the five-year period, 1926-1930. In a table which the Commission sets out it shows that the total traffic of the Coast Line System decreased from 944,101 cars 27,025,422 tons in 1926 to 621,232 cars with 16,784,331 tons in 1931 and that the log traffic of the System decreased from 79,114 cars with 2,196,971 tons in 1926 (including posts, poles, and cordwood) to 25,738 cars with 667,612 tons in 1930. The Commission then points out the like decline in the lumber traffic throughout the United States, in the Southern District and on the Atlantic Coast Line's system, setting out a table showing that decline.

The lumber traffic declined in the United States from 48,617,871 tons in 1920 to 27,584,148 tons in 1930; in the Southern District it declined from 17,708,828 tons in 1920 to 11,395,877 tons in 1930; and on the Coast Line's system, it declined from 2,665,512 tons in 1920 to 2,211,258 tons in 1930. The Commission then finds:

> "Thus, while there has been a substantial decline in the Florida log traffic, there have also been declines in other traffic, and the same forces that operated to cause a decline in other traffic were also no doubt responsible for much of the decline in the Florida log traffic." (186 I. C. C. 172).

The evidence which we have heretofore discussed amply sustains the Commission's finding.

THE EFFECT OF THE CONTINUED USE OF THE CUMMER SCALE ON THE REVENUE OF ATLANTIC COAST LINE RAILROAD COMPANY.

The Commission quotes at length from the evidence of the defendant's freight traffic manager Perrin (186 I. C. C. 174). The quotation is taken from R-893. The traffic manager estimated that the difference in the amount of revenue derived under the two scales of rates would be $2,779,968 if the Atlantic Coast Line "can be assumed to transport 40 per cent of the logs to be produced in Florida from timber now standing." There were included in the timber estimate 2,800,000,000 feet of pine timber owned by the four chief companies—Brooks-Scanlon Corporation, Cummer Cypress Co., Wilson Cypress Company and Wilson Lumber Company of Florida, but that amount of timber is not to be taken as the only stand-

ing timber in Florida affected by these rates. The witness Perrin's estimate was only as to "timber now standing." The reproduction of timber in Florida is very rapid because of the climatic conditions.

Mr. Perrin in this calculation very greatly understates this loss to the Coast Line. If the standing timber in Florida is 21,913,000,000 feet and assuming the weight of ten pounds to the foot and the average weight of 56,754 pounds to the car, that standing timber would amount to 3,861,050 cars. If the Atlantic Coast Line should handle forty per cent. of that traffic, it would handle 1,544,420 cars. The difference between the revenues under the Cummer scale and the scale prescribed by the Interstate Commerce Commission is $18.16 per car. Multiplied by 1,544,420, the loss would be equivalent to $28,046,667.20. These figures deal only with pine. They do not include cypress or hardwoods. If this estimate of figures be overstated, it makes little difference how much, for the loss which would be entailed by the continued use of the Cummer scale would, at its lowest figures, be tremendous.

CURRENT MOVEMENT OF LOGS AT TIME OF THE HEARING.

The findings of the Commission as to this appear at 186 I. C. C. 174-176. There was a trainload movement from Hines to the point on the Atlantic Coast Line's Perry Branch in the northwestern part of the peninsula to the Wilson Cypress Company's manufacturing plant at Palatka, a distance of 119 miles. That haul was being continued at the time of the hearing before the Commission. The Commission finds:

"Although this intervener, as well as others, testified at the original hearing that it would be impossible to continue the movement of logs over defendant's lines if the Cummer scale were increased, it actually has done so. It appears that under normal conditions it will continue to ship these logs over the defendant's line until the timber adjacent to the Perry Branch is cut out. Under the normal rate of cutting, it appears this would occur in about one and one-half to two years after the time of the further hearing." (186 I. C. C. 174).

WILSON CYPRESS COMPANY'S SHIPMENTS INCREASED AFTER RATE INCREASE.

The further hearing referred to was had on July 20, 21, 1931. The Hines to Palatka movement actually increased under the increased rates. The Commission finds that during the four year period, 1926-1929 16,658 carloads were shipped, averaging 4,164 carloads a year; and

"During 1930, when the increased rates were in effect 5142 carloads were shipped," etc.

The Commission finds that a small number of cars moved over the lines of the Southern Railway and the Florida East Coast Railway; and there was a small movement of logs over the Coast Line from various other points in Florida. These statements are borne out by the evidence of the witness McPherson (R-778, 871 and by exhibit No. 32). Pine and cypress are not the only logs affected by the rates. All logs save walnut, cherry and cedar are affected. There are movements in those logs. The estimates mentioned above include only pine. The Wilson Lumber Company at Perry, for instance, is engaged in producing hardwood lumber and has

procured its hardwood logs from the forests of the pine and cypress operators. The Commission finds (186 I. C. C. 175) that:

> "There have been fairly large movements of ash, black gum and other hardwood logs from Hines, Cross City, Foley, Homosassa, Otter Creek and other points to Perry. There have also been some movements of hardwood as well as cypress to Jacksonville."

This is sustained by the witness Flack's exhibits 114-122, beginning at R-1168, and especially R-1173, 1174.

The Commission finds (186 I. C. C. 175) that:

> "As shown by the table set out above, 5,135 carloads of hardwood logs moved over defendant's lines in Florida during the period February 8, 1929 to January 31, 1931."

The table referred to appears at 186 I. C. C. 171.

The loss of revenue on hardwood logs is not estimated by the witness Perrin, his estimates being confined to pine, shipments of which constitute the much larger part of the log shipments in Florida.

In considering the loss caused by the Cummer scale it should be remembered that the Cummer scale prevented an increase of the Georgia intrastate rates and this case grows out of the fact that the Georgia Public Service Commission had, after a long investigation, determined that the rates on the transportation of logs should be on an equal level with the interstate rates fixed in this cause and which are substantially higher than the rates charged. That was finally rescinded over

the opposition of the shippers based on the Cummer scale of rates and the advantage which that scale gave to them.

It was found by the Commission and sustained by the evidence which we have pointed out that if the Cummer scale had been applied over the Atlantic Coast Line's territory during the years 1929 and 1930, the reduction in revenue would have been approximately $675,381.21 (186 I. C. C. 168). Exhibit 61 which showed the amount of logs handled during the period beginning February 8, 1929 to January 31, 1931, both inclusive, over the Atlantic Coast Line in Florida, showed that 18,602 carloads moved during that period and that the difference in the amount of revenue received by the Coast Line under the increased scale of rates as compared with the amount which would have been received if the Cummer scale had been applied was $290,283.19 (186 I. C. C. 167).

Exhibits 56, 57, 58, 59 and 60 filed by the witness Perrin (found in the volume of exhibits physically reproduced for reference under stipulation of counsel) illustrate graphically the application of the Cummer scale of rates as compared with the interstate scale. The points of origin shown on these exhibits are Perry, Jacksonville, Palatka and Loughman, respectively. 170 miles from Palatka, Jacksonville and Perry reach well into the State of Georgia and from Loughman barely touch the southernmost boundary of Georgia.

It will be seen from these exhibits that under the Cummer scale, 3.7 cents will move 100 pounds of logs 170 miles, while under the interstate scale prevailing throughout the southern territory, 3.5 cents will move 100 pounds of logs 30 miles. After 170 miles the Florida intrastate scale of rates (Class P) immediately expanded to 8.33 cents per 100 pounds for 171 miles.

On the record before it the Commission found (186 I. C. C. 176) that:

> "The record as a whole warrants the conclusion that there will be a large Florida intrastate movement of logs over defendant's lines in the future. The movement at present is at a low ebb, but in view of depressed conditions the present movement can not be taken as the criterion for the future. In view of the vast quantity of timber in Florida tributary to defendant's lines, the large number of mills located on defendant's lines at widely scattered points in Florida, and the probability of the establishment of new mills, large and small, we entertain no doubt that the log traffic will increase well above the present volume when economic conditions change for the better."

See evidence of Perrin (R-887, et seq.).

STATE-WIDE NATURE OF INVESTIGATION.

The shipments shown on exhibit 61 (R-1101) are from 113 points of origin to twenty points of destination and cover the period from February 8, 1920 to January 31, 1931.

Exhibit 62 (found in the volume of exhibits physically reproduced for reference) is a map showing the destinations in Florida to which the shipments moved during the period covered by exhibit 61. As stated there were twenty points of destination. The maximum hauls ranged from twenty to one hundred sixty-nine miles; and the lowest minimum haul was six miles.

Exhibit 128 (R-1180) shows the movement of logs intrastate in Florida over the Coast Line from February 1, 1931

to June 30, 1931, from fifty-two points of origin extending widely throughout the State; and the same may be said as to the points of destination to a somewhat less degree (Perrin's evidence R-888).

The witness Perrin introduced certain exhibits which throw a good deal of light on the State-wide extent of the investigation. Exhibit 157 (R-1360) shows the points of origin and destination of shipments of logs transported in Florida intrastate by the Atlantic Coast Line, except trainloads, month by month beginning with February, 1931, and ending with August, 1932. The depression was then in its second year. This exhibit shows how widely distributed were those shipments, especially the points of origin.

He also introduced exhibit 158 (R-1370) showing month by month for the years 1930, 1931, and through August, 1932, the number of carloads of logs more than six feet in length shipped over the Atlantic Coast Line intrastate in Florida. The number of cars shipped from July, 1930, to July, 1931, was 3,245; and from July, 1931, to August, 1932, 2,453. The second period showed a decline of 24.4%. Dealing with the same period as shown by his exhibit 159 (R-1370), the shipments of lumber are shown to have decreased in substantially greater percentages on all Class I railroads in the South; on all Class I railroads in the United States; and as to the total number of carloads transported by the Atlantic Coast Line. This is discussed by the witness Perrin at R-1049, et seq.

The witness Fleishell (R-753-758) gave evidence as to the mills which were being operated, referring (R-755) to the mill at Sears where 250,000,000 feet of timber is standing.

Sears is in the southern part of the State of Florida, near Fort Myers; that there was timber surrounding the Sherman mill to the extent of about six or seven million feet; timber in the neighborhood of Holopaw; a tract of timber in Lee County containing from two to five million feet; a tract known as the Michigan Trust tract that runs from a point east of Orlando with 92,000 acres supposed to cut about 150 million feet. He spoke again of the tract at Sears; said he meant to speak of tracts which had above ten or fifteen million feet (R-756). He then spoke of other mills on the southwest coast: the Slater mill; the Ellsberry Camp mill at Wynoma; the McGowan-Foshee; and the Roux Crate Company at Keysville. He states that the Roux Crate Company had recently contracted with the Babcock interests to cut their timber on a large acreage in back of Fort Myers and Punta Gorda. Those points are in the extreme southwestern part of the peninsular of Florida. He also mentions mills at Patterson, McGinnis and Gulf Hammock. He then speaks of the timber on the east coast owned by T. T. Scott at Kenansville and of the J. M. Griffin Lumber Company at Holopaw. The timber referred to by Mr. Fleishell does not include the large tracts owned by the very large mills.

It can well be said that the investigation extended over the entire State of Florida and as far as the territory touched or is contributory to the Atlantic Coast Line Railroad Company.

Findings of the Commission as to the Cost of Transporting Logs Intrastate in Florida Over the Atlantic Coast Line Rd. Co., as Compared with the Gross Revenues Derived from Such Transportation.

The average distance which the 18,602 cars of logs transported intrastate in Florida over the Atlantic Coast Line from February 8, 1929 to January 31, 1931 as shown by exhibit 61, moved was 81.36 miles. That mileage is used by Mr. Lamb, General Auditor of the Atlantic Coast Line and by the Commission as the average haul in the evidence and findings as to the cost accounting.

The Interstate Commission found that the total cost per car for this average haul was $24.69. That amount included taxes and 5.75% return on investment. The revenue derived under the Cummer scale of rates for a car of logs moving this average distance was $15.12. The Commission found that the total operating cost of this haul was $17.07 not including taxes and return on investment. The gross revenue of $15.12 is $1.95 less than the total operating expenses; and when taxes and return on investment are included the gross revenue under the Cummer scale is $9.57 per car less than the total cost (186 I. C. C. 186-7; R-63).

The findings of the Commission on the subject of cost begins at 186 I. C. C. bottom page 176 (R-51) and continue through part of page 189.

The Atlantic Coast Line Railroad Company's evidence as to the cost of transporting logs in Florida is furnished by the witness Lamb whose evidence begins at R-686. Mr. Lamb's

evidence, including the filing of his exhibits was given at the hearing in Jacksonville, Florida and was resumed at the adjourned hearing had in Washington on July 20 and 21, 1931 (R-801). He was recalled at that hearing (R-899). His exhibits begin with No. 78 (R-1134a) and continue successively through No. 99 (R-1153) and begin again with No. 131 (R-1182a) through 133 (R-1184).

The Commission's findings (186 I. C. C. 176) on the subject of cost begin with this statement:

> "The defendant urges that the revenues produced by the Cummer scale are insufficient to cover the cost of the service performed; that no traffic is of value from a revenue standpoint unless it yields more revenue than the cost of its handling; that its study of the result of the operation under the Cummer scale is conclusive to it that such operation yields it no profit, but, on the contrary, results in an actual loss on the log traffic as a whole. It is manifest that if the Cummer scale produces less revenue than the cost of the service, declines in the traffic have the favorable effect of reducing defendant's losses and that an increase in the traffic would only serve to augment those losses. In support of its contention that the Cummer scale results in losses, defendant submitted voluminous evidence bearing upon the cost of transporting logs in Florida. It is necessary to consider this evidence with a view to determining whether it shows that the Cummer scale rates do result in revenue losses."

The Commission correctly stated the position of the defendant. The Commission's findings of fact, amply supported by the evidence agree with the defendant's contention that the cost of transporting logs in Florida was more than the

revenue derived therefrom under the Cummer scale, whether in carload lots or in trainload lots.

We have stated the findings of the Commission as to the amount of loss on the carloads moving the average distance of 81.36 miles.

As we have seen only one trainload movement continued, except for a very short time, after February 8, 1929. The Commission found (186 I. C. C. 180) that the cost of transporting a trainload movement from Hines to Palatka—119 miles—including taxes and the proportionate share of return on investment at 5.75% amounted to $27.52 per car, while the gross revenue received therefrom under the Cummer scale was $19.96. That is, the loss on each car handled in the Hines to Palatka movement was $7.56 per car.

It becomes necessary for us now to review Mr. Lamb's evidence.

This evidence is very well expressed in the exhibits filed by Mr. Lamb, the result of some of which has been heretofore referred to.

Exhibit 78 (R-1134a) shows the property investment and operating income account of the Coast Line for the years 1926-1930, inclusive. The total property investment at the end of 1926 was $287,758,229; 1927, $303,271,358; 1928, $303,543,741; 1929, $306,439,250; 1930, $305,977,599. This investment increased from 1926 to 1930 by $18,219,370, while the rate of return on the investment which was 6.11% in 1926 decreased to 2.37% in 1930. It has continued to decrease.

Exhibit 79 (R-1134b) shows the same facts as to the State of Florida. Here we will show only the 1926 and 1930 figures. In 1926 the total property investment was $95,176,163.92 and in 1930 it was $102,759,627.23 or an increase of $7,583,463.31; while the rate of return on investment which was 5.41% in 1926 decreased to 1.17% in 1930. Since that time it has been more than entirely eliminated.

Exhibit 80 (R-1134c) is a statement of the logs handled and the revenue derived therefrom on the Coast Line's System and in Florida for the years 1926-1930 inclusive. It shows the ratio of the log traffic to the Total Traffic for the System and the ratio of the Florida log traffic to the System traffic in logs. We have heretofore referred to this exhibit. It shows the very small percentage of ratio between the revenue derived on the one hand and the number of cars hauled and tonnage handled, on the other.

Exhibit 81 (R-1134c) is a statement of freight revenues and revenue tons giving a comparison between Florida and the entire System, excluding Florida, for the years 1926 through 1930, with the percentages of relationship and the interstate and intrastate freight revenues derived from the freight handled in Florida during those years and the percentage of decrease as compared with 1926.

The intrastate revenue for the System excluding Florida decreased 26.38% from 1926 to 1930; while the intrastate revenue in Florida decreased during the same period 52.88%. The same exhibit shows the same items as to the number of tons handled with approximately the same results, except when measured by tons the System intrastate traffic, excluding Florida decreased 24.86% and in Florida the decrease was 56.66%.

Exhibit 82 (R-1135) shows the density of traffic for northern Florida as compared with southern Florida for the calendar year 1927. That has been dealt with heretofore.

Exhibit 83 (R-1136a) shows the traffic density statistics in the State of Florida as compared with the System and with the System excluding Florida for the years 1921 through 1930.

Exhibit 83½ (R-1136a) is the same kind of statement as to the Seaboard Air Line Railway which operates over about 1,850 miles in Florida and oftentimes close to the Atlantic Coast Line. The experience of that road is very much the same as that of the Coast Line. For instance, the percentage of revenue ton miles in Florida to the System on the Seaboard Air Line for the five-year average was 28.22%. On the Coast Line the percentage for the same five-year average was 28.6%. The Atlantic Coast Line's percentage of Florida ton miles to the System excluding Florida was 41.5%; while that of the Seaboard Air Line for the same five-year average was 40.90%. The Coast Line's percentage of Florida tons one mile per mile of road to the System for the five-year average was 72.8% while the Seaboard Air Line's was 71.10%.

Exhibit 84 (R-1137-38) is a statement showing freight proportion of yard accounts and other accounts eliminated, for the year ended December 31, 1929. The total amount eliminated was $9,629,744 including fifty-seven accounts. The purpose of this elimination was to take from his future calculations account which represented yard or terminal expenses.

The Interstate Commission found that the amount eliminated by Mr. Lamb was too great, stating (180 I. C. C. 179) that:

> "There were deducted, first, all freight yard accounts, 42 in all, the total of which aggregated $4,550,039. Then all amounts in 15 other accounts, aggregating $4,665,936, were completely eliminated. Many of these were obviously not directly attributable to the handling of logs, such as wharves and docks, paving, assessments for public improvements, floating equipment, outside agencies, advertising, traffic associations, and industrial and immigration bureaus. Some of the others were clearly attributable, at least in part, to the handling of logs but were entirely omitted because of the difficulty of ascertaining the proper proportion that should be allocated to that traffic. For example, station employees in the transportation block of expenses, account 373, shows charges to freight of $3,281,352.20. There would seem to be no doubt but that a portion of the charges to this account is properly attributable to the handling of logs. To this account are charged agents, clerks, and attendants, telegraph and telephone operators, station agents, etc., who handle the billing of log shipments and perform other services. But that account was entirely eliminated. Finally there was eliminated 4.4897 per cent of general expenses, amounting to $413,769. The grand total thus eliminated aggregated $9,629,744."

The reason why Mr. Lamb eliminated those accounts was two-fold: No accountant in this case claims, nor does the Commission claim, to be able to state with exactness the cost of handling a single commodity (R-695).

Lamb stated his ascertainment of costs, as we shall see in the examination of his exhibits, in two ways: One of the methods is expressed in column A and the other in column B

of his exhibits beginning with No. 86 going through 99. Column A expresses the cost ascertained with the elimination of the items referred to aggregating $9,629,744; and column B is the cost ascertained taking into consideration all the freight haulage expenses, making no eliminations of the above mentioned fifty-seven accounts aggregating $9,629,744.

Lamb stated that his ascertainment of cost under column A of his exhibits understated the actual cost and his ascertainment under column B overstated it; that the actual cost was between the two. (R-702).

Exhibit 85 (R-1139) is a statement showing the method of assigning taxes and 5¾% return on investment. There has been no controversy over this method.

We digress here to call attention to the fact that exhibits 86 through 99 have in them a common mistake. Note A in exhibit 86 reads: "Item 9 'A' equals 35.027% of total freight haulage expenses only." That percentage should have been 25.9405% and the note should read: "Item 9 'A' equals 25.9405% of total freight haulage expenses only."

In the same note, item B reads: "Item 9 'B' equals 23.5192% of total freight expenses." That percentage should be 19.069%. (See the Commission's report, 186 I. C. C. 178 and 179, notes thereto; and R-53-54.)

This change was recognized at the hearing in Washington. This works a change in all the figures on exhibits 86-99 from line 9 to line 16 in both columns A and B. Exhibit 86 should read, and was treated by the Commission as reading as follows:

Exhibit No. 86
Witness: Geo. W. Lamb

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER GROSS TON-MILE

Average Haul	"A"		"B"	So-called Cummer Scale
1. Miles		81.36		
2. Average Revenue per Car				$15.12
3. Average Billing Weight—pounds		56,754		
4. Average Tare Weight—pounds		33,000		
5. Average Tare Weight—Empty Haul—lbs.		33,000		
6. Gross Weight—pounds		122,754		
7. Gross Tons		61,377		
8. Gross ton miles—7x1		4,994		
9. Out of pocket expenses per gross ton mile			.0882888¢	
10. Out of pocket expenses per gross ton mile (100%)	.3406309¢a		.4632005¢b	
11. Operating Cost—8x10	$17.01		$23.13	
12. Income Taxes—3.00985% of 2—11#	x		x	
13. Florida Taxes—15.3950% of 11#	2.62		3.56	
14. Operating expenses—Taxes—11-12-13	19.63		26.69	
15. 5¾% Return on Investment—11x32.97536%	5.61		7.63	
16. Total Cost including Return on Invest.	25.24		34.32	

#See Exhibit No. .....

Note: a Item 9 "A" equals 25.9192% of Total Freight Haulage Expenses only.

b Item 9 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line "A" and "B" respectively.

Corrected copies of Lamb's exhibits 87-99, both inclusive are attached hereto as appendices No. 1a-m, incl.

In exhibit 86 Mr. Lamb found that the operating costs for the average haul of 81.36 miles, based on cost per gross ton-mile was $17.01 per car. That is to be compared with the Commission's ascertainment of $17.07 (186 I. C. C. 186). The Commission found the operating costs for this movement to be six cents more than Mr. Lamb found it. Mr. Lamb found this cost plus the Florida taxes and return on investment at 5¾% to be, under column A, $25.24 against the revenue derived under the Cummer scale of $15.12. The Commission found, as we have seen, the total cost per car to be $24.69—a difference of fifty-five cents when compared with Mr. Lamb's ascertainment. The Commission said as to its own finding of this cost (186 I. C. C. 187):

> "The above figures undoubtedly understate the cost of transporting logs in Florida for several reasons. One of these is that costs per unit in Florida are higher than the average for the entire road or system including Florida." Etc.

Mr. Lamb in column B of his exhibit 86 ascertained the cost per car at $34.32 against the revenue of $15.12.

As we have stated the difference between the cost ascertainments in columns A and B is that in column A no consideration was given to the $9,629,744 of expenses eliminated by Mr. Lamb while in column B all the expenses, including those eliminated items were taken into consideration.

We ask the Court to bear in mind that Mr. Lamb stated that his ascertainment of the cost of this transportation serv-

ice under column A was too little and under column B too great; and then to bear in mind that the Commission has said that all of the $9,629,744 should not have been eliminated. (186 I. C. C. 179); and then to note the above quoted finding of the Commission to the effect that its own figures, to which we have referred "undoubtedly understate the cost of transporting logs in Florida for several reasons." (186 I. C. C. 187).

If we give effect to that quotation, the result will be a confirmation of Lamb's statement that his cost as ascertained in column A of his exhibits is too little, while under column B is too great, and that the actual cost lies between the two ascertainments.

Mr. Lamb's cost is ascertained on two bases: One, cost per gross ton-mile; and the other, cost per loaded and empty car mile. The Commission used the plan based on the ton-miles. The Commission did not make an ascertainment of cost in other brackets as to carloads. It did make another ascertainment, using 119 miles with which we will deal later.

In exhibit 87 [Appendix 1(a) hereto] Mr. Lamb ascertains the cost per car for the average haul on the basis of loaded and empty car miles and shows the cost under column A to be $27.49 and under column B $37.39, against the revenue of $15.12 under the Cummer scale.

In exhibit 88 [Appendix 1(b) hereto] Mr. Lamb ascertains the cost per car for 169 miles on basis of cost per gross ton-mile. Under column A he ascertains the cost to be $53.69 per car; and under column B $73.03 per car, against

revenue derived under the Cummer scale of $22.10. The 169 mile haul was from Perry to Eastport and included a large percentage of the hauls made.

Exhibit 89 [Appendix 1(b) hereto] shows the cost based on cost per gross ton-mile per car for 152 miles. Under column A it is $48.28 and under column B $65.65, against revenue of $20.30 under the Cummer scale.

Exhibit 90 [Appendix 1(d) hereto] shows the cost per car for 130 miles based on cost per gross ton-mile. Under column A it is $42.76 and under column B $58.16 against revenue of $20.62 under the Cummer scale. That haul was from Homosassa to Perry and constituted a substantial one.

We pass over exhibit 91—from Hines to Palatka—119 miles—but will return to it later.

Exhibit 92 [Appendix 1(f) hereto] estimates the cost per car for 99 miles. Under column A it is $29.02 and under column B, $39.45 against revenue per car of $13.78.

Exhibit 93 [Appendix 1(g) hereto] estimates the cost per car for 68 miles—Homosassa to Lacoochee. Under column A the cost is $20.16; under column B, $27.41, against revenue per car of $12.44.

Exhibit 94 [Appendix 1(h) hereto] estimates the cost per car for 52 miles—Homosassa to Otter Creek. Under column A the cost is $16.03 and under column B, $21.81 against revenue per car of $12.02.

Lamb's exhibits 95-99, both inclusive, deal with the estimated cost of these various movements on the basis of loaded and empty car miles, which basis was not used in this case.

IT COSTS MORE TO OPERATE IN FLORIDA THAN ON THE OTHER PARTS OF THE COAST LINE'S SYSTEM.

Mr. Lamb stated (R-694):

> "I have attempted to develop whether or not the cost of operation in Florida was really greater than the cost on other parts of the Atlantic Coast Line. And from this study it would appear that the cost on the third division, which operates exclusively in the State of Florida, is considerably higher per unit than the cost on the first and second divisions operated north of Jacksonville. I base this statement on an analysis made showing certain 'out-of-pocket' expenses in Florida, for the third division, as compared with similar expenses on the first and second divisions. The accounts selected were as follows:
>
> "392. Road Enginemen.
> "394. Road Locomotives—Fuel.
> "397. Road Locomotives—Water.
> "398. Road Locomotives—Lubrication.
> "399. Road Locomotives—Supplies.
> "400. Engine House Expenses—Road.
> "401. Road Trainmen.
> "402. Train Supplies and Expenses."

Out-of-pocket expenses consist of accounts which may be accurately ascertained.

Mr. Lamb continues:

> "This analysis was made for the twelve-month period July 1, 1928, to June 30, 1929, inclusive. The costs for these 'out-of-pocket' expenses for the third division and for the first and second divisions, respectively, were as follows:

	Cost per freight-car-mile loaded and empty.
Third Division	2.95176 cents
First and Second Divisions.....	1.717496 cents

"Ratio of Third Division to First and Second Divisions, 171.85 per cent."

Mr. Lamb further states that the cost per thousand gross ton-miles on the Third Division was 88.288 cents; on the First and Second Divisions, 53.26312 cents; the ratio of Third Division to First and Second Divisions being 155.62 per cent. He continues:

> "These comparisons clearly demonstrate the difference in the cost of operation in the State of Florida, where the density of traffic is low, as compared with the balance of the system having a much higher density of traffic. Exhibits previously filed by me indicate the considerable difference in the traffic density of the State of Florida as compared with the balance of the system excluding Florida. The above 'out-of-pocket' costs were developed from an actual analysis of vouchers, payrolls, material and supply issues, etc., for each of the months, July 1, 1928, to June 30, 1929, both inclusive." (R-695).

Mr. Lamb finds that the ratio between the out-of-pocket expenses and the freight haulage expenses, eliminating the accounts heretofore referred to which aggregated $9,629,744 was 25.9191%; and when the total freight expenses were included that percentage was 19.069%.

Mr. Lamb defines the Third Division (R-705) as being "all of Florida, south of Jacksonville, and from High Springs to the south, and then Fincher to Thomasville, all south of

there. It does not include Florida north of High Springs." That statement reduced to mileage means all of Florida except 126 miles.

Mr. Lamb explains at some length how he ascertains the items making up the out-of-pocket expenses for the Third Division (R-708).

The Commission finds (186 I. C. C. 183) that:

> "There appears to be no doubt that the operating costs per unit are generally higher in Florida than the average for the defendant's system as a whole either including or excluding Florida. This is clearly indicated by various things. Using the year 1929 as illustrative, freight-traffic density in Florida, expressed in terms of revenue ton-miles per mile of road operated, was 62.8 per cent of that for the system including Florida, and 50.4 per cent of that for the system excluding Florida. Using a 5-year average, 1926-1930, inclusive, which included the boom period, freight-traffic density in Florida was 72.8 per cent of that for the system including Florida, and 63.9 per cent of that for the system excluding Florida. Also using the year 1929 as illustrative, freight-service train-miles in Florida were 30.63 per cent of those for the system including Florida, and freight-service locomotive-miles in Florida were 30.92 per cent of those for the system, including Florida, while loaded freight car-miles in Florida were 21.25 per cent of those for the system including Florida; loaded and empty freight car-miles in Florida were 22.43 per cent of those for the system including Florida, and revenue ton-miles in Florida were 25.05 per cent of those for the system including Florida. In 1929 the trains operated in freight service hauled an average of 18.16 loaded cars or 31.69 loaded and empty cars per train in Florida, as compared with 26.17 loaded cars or

43.28 loaded and empty cars per train on the system, including Florida."

These findings are amply sustained by the evidence and exhibits to which we have already referred.

MOVEMENT HINES TO PALATKA.

Hines is situated in the northwestern part of the peninsular of Florida in Dixie County. Palatka is in a southeasterly direction 119 miles away. It is on the Florida East Coast Railroad, the Georgia Southern & Florida Railway Co. which is a part of the Southern Railway System, and on the Atlantic Coast Line. It is also on the St. John's River. This movement continued during the entire time the interstate rates were in effect (February 8, 1929 to March, 1931) except for a time when a part of the consignee's mill had been destroyed by fire.

The Interstate Commission found that the cost of this movement was $27.52 per car (186 I. C. C. 182). The revenue derived therefrom under the Cummer scale was $19.96 per car. This was $7.56 per car more than the gross revenue derived therefrom.

Mr. Lamb found [Exhibit 91 corrected, see Appendix 1(e) hereto] that the cost under his column A was $38.59 and under his column B $52.48. In making these ascertainments Mr. Lamb used the same out-of-pocket expenses per gross ton mile (see line 9 of exhibit 91) as he had used for single car lots which was somewhat too large for this movement. That out-of-pocket expenses is expressed in the exhibit as being .0882888 cent, while the Commission used the

figure 0.0620831 cent per gross ton miles in ascertaining the cost of this movement to be $27.52 per car. The Commission found that this "is below the average out-of-pocket cost of the Florida log transportation" (186 I. C. C. 183). The Commission's calculation on the basis of the reduced out-of-pocket expense per gross ton mile does not take into consideration any of the eliminated items including yard expenses, and station agents which aggregate $9,629,744 but leaves all of those expenses wholly unaccounted for. Some of them ought to have been included. Certainly all of them ought not to have been eliminated, for the Commission has held that Lamb in his calculations eliminated too much. So that, it is clear that $27.52 per car is not a sufficient statement of the cost of this movement. It is not claimed that $38.59 is the actual cost but it is claimed that the cost on the basis used by the Commission as to the out-of-pocket expenses per gross ton mile is out of line for two reasons, to-wit: It does not take into consideration any part of the expenses which Lamb eliminated aggregating $9,629,744; and it does not take into consideration the fact that the cost of doing business in Florida is greater than on other parts of the Coast Line's system. The Commission states (186 I. C. C. 184) that:

> "The operating expenses allocated by defendant to Florida are not actual but constructive expenses, and that they are understated to an unknown extent. In view of this fact, system figures including Florida, which are not in question, may be utilized as the basis for approximating the cost of transporting logs in that state."

But the Commission's ascertainment of this cost is sufficient to sustain its findings that the Cummer Scale of rates works

an unjust discrimination against interstate commerce; though we believe that is greater than the Commission found.

THE USE OF THE SYTEM UNIT COST.

After the Commission had stated that its ascertainment of the expenses of this transportation in Florida was understated to an unknown extent; and after it had determined that the operating costs per unit were "generally higher in Florida than the average for the system as a whole, either including or excluding Florida" (186 I. C. C. 183); and also, after it had found that the traffic density in Florida was very much less than that for the system, including Florida; and that the freight-service train-miles in Florida were 30.63% of those for the System, including Florida; and that the freight-service locomotive-miles in Florida were 30.92% of those of the System, including Florida; while loaded freight car miles in Florida were 21.25% of those for the System, including Florida; and that loaded and empty car miles in Florida were 22.43% of those for the System, including Florida; that in 1929 the trains operated in freight service hauled an average of 18.16 loaded cars or 31.69 loaded and empty cars per train in Florida as compared with 26.17 loaded cars or 43.28 loaded and empty cars per train on the System, including Florida (186 I. C. C. 183-4); it then found:

> "System figures including Florida, which are not in question, may be utilized as the basis for approximating the cost of transporting logs in that State. Ordinarily it would be unsound to use a system unit cost to determine the cost in a particular State, but since it is indisputable

that unit costs are higher in Florida than elsewhere on the system, it seems clear that system unit costs may be used to find a cost *that may be said to be less than the cost in Florida.*" (186 I. C. C. 184 Italics added).

This statement of the Commission adds to the strength of our argument that the full cost of this movement has not been ascertained by the Commission; and we may assert, with certainty, that the cost used by the Commission was, as it states, "less than the cost in Florida."

The use of system unit cost in ascertaining the cost in Florida was beneficial to the complainants.

Notwithstanding the facts which we have recited in this paragraph the Commission in making its appendix E to its report made further deductions, to-wit: It deducted one item of $1,281,069 as representing items which it classified as "expenses not involved in handling log traffic." It did not stop there. It then deducted $2,555,778 as representing "the excess terminal expenses (platform and clerical) incurred for less than carload over that incurred for carload freight estimates at 75% of account 373 'station employees' and 376 'station supplies and expenses' ($3,407,704 x 75%). (See 186 I. C. C. 196).

It is not accurate to say that the Commission used the System average at all for the reason that it made the deductions mentioned. It is all the more inaccurate to say that the System average was used as representing the cost of handling those high-priced commodities which usually move in less than carload quantities.

Criticism of the Accounting by the Atlantic Coast Line.

We have seen that the Commission held (186 I. C. C. 184) that the operating expenses found by it "are understated to an unknown extent."

We have also seen that the Commission does not claim that it is able to state with exactness the cost of moving any single commodity; and that neither of the accountants make any such claim.

The Commission finds (186 I. C. C. 184) that:

> "The operating expenses allocated by the defendant to Florida are not actual but constructive expenses."

That statement is placed, as nearly as we can analyze it, upon two bases:

One of these is that the witness Lamb used the average expenses of the Third Division in ascertaining the cost of the log movement; that about 25% of the traffic in that Division consists of perishables such as citrus fruits, etc., which requires handling at high speed and more Terminal Expenses than logs and is therefore more expensive.

We answer this criticism by saying that if it stood by itself there would be a measure of correctness in it; that it affected only 25% of the business in Florida and the effect was to the extent that it cost more to handle those perishables than to handle the logs. What that difference is our adversaries have not undertaken to show. We make another answer which appears to us to be entirely complete. It will be re-

membered that Lamb in taking the quantities for his accounting first took the total freight operating expenses of $36,308,813 and then subtracted from them $9,629,744 which he treated as representing terminal expenses and certain other expenses not attributable in their entirety to log traffic. The Commission, as we have seen found that Mr. Lamb eliminated too much. Mr. Lamb intended that the deductions or eliminations made by him should more than equalize any overcharge in the expenses that might have been due to the fact that the perishables transported in Florida required higher expenses than the log traffic; and he used the result of that in ascertaining his final figure under column A of his exhibits ascertaining the cost of transporting the logs.

The Commission ascertained its own cost figures which came to practically the same, as we have seen, as those in column A of Mr. Lamb's exhibit for the average distance of 81.36 miles (exhibit 86), and further stated that its figures "undoubtedly understate the cost of transporting logs in Florida;" etc. (186 I. C. C. 187).

The other is that Operating Expenses were assigned to the State of Florida on a Revenue or System Operating ratio basis. As the cost of service per unit is greater in Florida than on the balance of the system this method favors Florida in this assignment of expenses.

The Commission also found that:

> "The Florida interveners presented no affirmative evidence tending to show the cost of transporting logs in Florida but criticized defendant's cost evidence," etc. (186 I. C. C. 182).

The Commission gave no further thought to the criticizing evidence of the Florida Commission's witness, Mr. Pettijohn. Mr. Pettijohn did not undertake to state the cost of doing this transportation business. The normal reason to be attributed to this action on his part is that he could not make a statement more favorable to the Florida Commission's interest than was made by Mr. Lamb. It is plain he did not withhold his statement for lack of study because his evidence showed he had made an extended study. He injected into the situation some irrelevant statistics. He fell into the great error of taking into account income from certain lines without taking into account investment in those lines.

He based his criticisms as to gross and net revenue largely on a comparison between the years 1921 and 1930. As everybody knows, 1921 was a year of great depression, especially in the transportation business, and a comparison of 1930 with 1921 is scarcely likely to lead to satisfactory results, especially so when a comparison with all other years shows 1930 to have been far below any of them. In the meantime, according to Mr. Pettijohn's own statement (Exhibit 102) the grand total investment of the Atlantic Coas Line had increased approximately $67,000,000.

THE MOVEMENT OF LOGS INTERSTATE FROM FLORIDA TO GEORGIA.

The point is made by the complainants that the evidence shows no actual movement of logs from Florida to Georgia. The Commission refers to this (186 I. C. C. 189) saying:

> "The evidence introduced at the original hearing did not show any actual movement of logs from Florida to

Georgia. The then existing interstate rates were more than twice as high as the Cummer scale. The evidence was conflicting as to whether there were logs available in northern Florida that could be economically purchased and transported over defendant's lines to Georgia, but was not convincing that logs could not or would not so move if the interstate and intrastate rates were on the same level. As a result of the former order entered herein the rates from northern Florida to Georgia were reduced and the rates within Florida were increased and both were on the same level from February 8, 1929, to about April 10, 1931. Notwithstanding this parity of rates, it appears from the evidence introduced at the further hearing that there was no movement of logs from Florida to Georgia during that period, except possibly an occasional carload. Whether an interstate movement from Georgia to Florida will develop after the interstate and intrastate rates are again put on a parity and the rate situation finally settled, it is impossible to say at the present time."

There were many things which militated, during the period involved and which continue to militate, against such movement and these include the following:

The timber in the vast tracts of land owned by the large shippers, who are complainants in this case, is not for sale. There are many scattered tracts and it was so found in the court below [30 Fed. (2d) 116, at 120], and there is ample evidence in this regard to justify the finding by the Commission and the court below.

The times make against the manufacture and sale of what the economists call non-consumptive goods, chief among which are house building materials.

The rate situation has been, during the whole of this time, very unsettled. During the period when the interstate scale was in effect, from February 8, 1929 to March or April, 1931 there was litigation over the order of the Commission and of the court which put the increased rates into effect. That litigation succeeded in restoring the Cummer scale of rates about April, 1931. The increased scale of rates, fixed by the Interstate Commission, did not go back into effect until February 25, 1933.

The period when the interstate scale of rates was in effect—February 8, 1929 to March or April, 1931—which is frequently referred to as the two-year period, was one of poor economic conditions. The effect on the shipments of logs and lumber has been shown by the findings of the Commission which have been quoted and by the evidence to which we have heretofore referred. These are circumstances of such wide import that the court may take note of them. In addition to that, the order of the Interstate Commission fixing the rates was in litigation and of course, that created a great uncertainty over the subject; and finally the rates fixed by the Interstate Commission were overthrown in this court. Those were not times nor circumstances which made for the development of new mills or the reversing of the course of commerce in logs as between northern Florida and Southern Georgia. The Cummer rate structure when applied to logs moving from Florida woods to Florida mills was only from one-half to one-third as much as the rate structure applicable to logs moved from Florida woods to Georgia mills though the distance was the same, or practically the same. Of necessity, this resulted in the establishment of large mills in Florida and in completely stopping the movement of logs

from Florida woods to Georgia mills in so far as that movement was over the Atlantic Coast Line Railroad Company. It will take much time to overcome that condition; and such condition is not to be overcome or removed in times when the basis on which it was established is still in litigation. The economic conditions have been, and are, such that the private initiative in business is all but benumbed.

The logs not owned by the large mills must rearrange their selling arrangements and that was not likely to have been done in the unsettled circumstances then at hand.

The lower court in its first decision [*State of Florida v. United States*, 30 Fed. (2d) 116, at 120] dealt with this condition, and refers to the contention that there was evidence to disclose such complete ownership of the sources of logs in Florida by Florida mills as to insure their moving to their owners and leaving no substantial amount which could move to Georgia on the interstate rates fixed, with the result that in no real or fair sense could it be held that the low intrastate rates did prejudice or discriminate against interstate shippers or interstate commerce. The court holds:

> "This contention is well supported so far as concerns large tracts of timber, logs from which would move in train loads, as do most of those in Florida now handled by the Coast Line Railroad. But the rate assailed is not a trainload rate, but a carload rate, and the evidence abundantly justifies the conclusion that there is an indefinite quantity of what is called 'scattered timber,' not yet cut, in north Florida, which is not owned by Florida mills and which the Commission could find would be as likely to move to Georgia as to Florida points if a rate parity were afforded."

The argument of our opponents on this subject seems to reverse the reasoning processes, for the very accumulation of logs in northern Florida to which they refer is an effect caused by the Cummer scale of rates.

This case is not confined to discrimination against logs though the Cummer scale of rates had largely eliminated interstate traffic in logs between Florida and Georgia. This case involves discrimination against *interstate commerce* and that discrimination is worked by an unjust, unreasonable, disparity in the charges for intrastate commerce of logs in Florida as compared with interstate transportation of logs from Florida to Georgia.

The State of Florida has fixed and is earnestly endeavoring to maintain a rate structure for the transportation of these logs which produces to the carrier a gross revenue less than the cost of rendering the service, and which has the effect of largely eliminating the transportation of logs out of the State of Florida into the State of Georgia.

The Florida Commission foretold this result at the time the Cummer scale of rates was introduced (See 186 I. C. C. 190, 191 and 192 where there is reproduced correspondence from the officers of the Florida Commission). The condition is inimical to interstate commerce. It is as though the State of Florida were trying to hold one of the natural resources to itself by its railroad rates.

CONCLUSIONS AND FINDINGS OF THE COMMISSION.

The Commission finds (186 I. C. C. 187) that:

> "In determining whether the Cummer scale results in unjust discrimination against interstate commerce the

fundamental question, in the language of the Supreme Court in *Wisconsin R. R. Comm. v. C. B. & Q. R. R. Co.*, 257 U. S. 563, 568, and in *Florida v. United States*, 282 U. S. 194, 211, is whether the traffic moving on that scale pays 'a fair proportionate share' of the cost of maintaining defendant, or whether it causes an undue revenue burden upon the interstate traffic of defendant."

This is followed with this statement by the Commission:

"The record shows the low earnings of defendant; the low earnings on its log traffic as compared with its earnings on other low-grade commodities; the much lower earnings on its Florida log traffic than on its interstate log traffic; and the much lower level of the Cummer scale than of other scales applicable interstate and intrastate throughout the South. *These facts and the cost evidence clearly warrant the conclusion that the traffic moving under the Cummer scales does not pay its 'fair proportionate share' of operation and maintenance alone.*" (Italics added).

Attention is called to the fact that the Commission concludes that this traffic does not bear its fair proportionate share of *operation and maintenance alone.* By that it means to exclude return on investment and taxes.

We submit that the "subordinate findings" or what we have heretofore called the "intermediate" findings of the Commission clearly sustain that conclusion.

The Commission continues its findings on the next page (186 I. C. C. 188) and shows that the average movement of logs over the Coast Line for the two-year period minus the number of cars included in the discontinued trainload movements was 7,431 cars; and finds:

"That the movement will not be less than this under normal conditions is confirmed by the fact during the five months immediately preceding the last hearing in this case, February to June, 1931, when conditions were abnormal, there were shipped over defendant's lines in Florida a total of 2,765 cars of logs. This movement was at the rate of 6,636 cars a year. We believe that the movement of logs intrastate in Florida over defendant's lines will not be materially curtailed under the rates which we here prescribe, which are the same or substantially the same as the rates generally in effect and under which logs freely move throughout the South."

The Commission proceeds to

"affirm the finding of division 4 that the interstate rates previously in force on logs over 6 feet in length, except walnut, cherry, and cedar, in carloads, from points in northern Florida to destinations in Georgia were unreasonable to the extent that they exceeded those prescribed in the report of division 4, and we find that the rates therein prescribed, which are now in effect, are reasonable." (186 I. C. C. 189).

Those interstate rates then in effect and found to be reasonable were the interstate rates which were prescribed by the Commission in its first report of August 2, 1928 (146 I. C. C. 717). There is no evidence that there was no movement over the Seaboard Air Line and the Georgia, Southern and Florida Railway both of which operated in the States of Florida and Georgia.

The Commission further finds (186 I. C. C. 189) that:

"We further find that the intrastate rates on logs over 6 feet in length, except walnut, cherry, and cedar, applicable between points on the Atlantic Coast Line in

Florida for distances of 170 miles and less are, and for the future will be, unjustly discriminatory against interstate commerce, and that such unjust discrimination can be and should be removed by the establishment between all points on the Atlantic Coast Line in Florida for distances of 170 miles or less of rates not less than the rates shown for such distances in Appendix F hereto, which are the rates found reasonable for interstate application from northern Florida to Georgia."

The Commission continues its findings at page 190 of 186 I. C. C., and after referring to the fact that with the possible exception of "an occasional carload" there was no movement of logs from Florida to Georgia during the period from February 8, 1929 to March or April, 1931, said:

> "Inasmuch as we find that the Cummer scale of rates cause unjust discrimination against interstate commerce from a revenue standpoint and our order herein removes that discrimination by increasing those rates on defendant's lines throughout the State of Florida to the level of the interstate rates previously prescribed and now in effect, no finding in reference to undue prejudice against persons and localities in interstate commerce is necessary and we make no finding in that regard. Any such undue prejudice as now exists because of the disparity in the intrastate and interstate rates will be removed by compliance with the order which we here enter for the purpose of removing the unjust discrimination against interstate commerce."

The evidence before the Commission clearly showed that the disparity between the Cummer scale of rates in Florida and the interstate scale of rates and the rates applied intrastate in Georgia had the effect of shutting out the Georgia mills from many markets in the entire northeastern part of the United States.

IX

SUMMARY OF THE COMMISSION'S FINDINGS IN THE THIRD HEARING (*Georgia Public Service Commission v. Atlantic Coast Line Railroad Company*, 190 I. C. C. 588-January 9, 1933)

The findings of the Interstate Commission made after the District Court's order suspending the order of July 5, 1932 and its own order of October 21, 1932 reopening the cause for limited consideration, may be summarized as follows:

1. The cause was reopened solely to consider any changes in log rates, the reasons for such changes, and whether the same conditions and circumstances applied in Florida (190 I. C. C. 589).

2. Every finding made by the Commission in its previous reports in this case is affirmed (190 I. C. C. 600).

3. The new rates were on basis of *per car regardless of weight*, applicable first west of the Mississippi and later in the *western* part of the Southern territory; most of them limited to a maximum distance of 100 miles; all of them not applicable to *all points* on the railroads filing the tariffs; most of them carrying transit obligations on the outbound product. (190 I. C. C. 589, 590, 591). The method of rate-making on basis of per car regardless of weight was declared to be unlawful because it opened the door to unfair and unjust discriminations, in the cases of *Louisville & Nashville Rd. Co. v. Speed-Parker Co.*, 103 Fla. 439, in the 18th Div. of the opinion, p. 459, and *Seaboard Air Line Rd. Co. v. Lumberman's Co.*, 168 Ga. 851, 855.

4. These rates were expressly limited so as to expire on a named date. (190 I. C. C. 590).

5. These rates were established *experimentally* for the sole purpose of meeting *truck*, and in some few instances, railroad *competition* in that territory. The *experiment was not successful.* (190 I. C. C. 592).

6. The conditions and circumstances surrounding these *unsuccessful experimental* rates were not applicable to the transportation of logs in Florida. (190 I. C. C. 592, et seq. and 599).

7. The Commission thought that these new rates gave no cause for changing its opinion and orders theretofore made. The order which the Commission had previously entered suspending the operation of its order of July 5, 1932, as amended, was vacated. (190 I. C. C. 600).

X.

ANALYSIS OF THE THIRD REPORT OF THE COMMISSION—(*Georgia Public Service Commission v. Atlantic Coast Line Rd. Co.* 190 I. C. C. 588).

The Commission ordered its second order (186 I. C. C. 157) into effect on September 15, 1932. Bills have been filed by complainants to enjoin it. Hearing had been had thereon on September 14, 1932, and the Court had suspended the order of the Commission under the provisions of the Interstate Commerce Act, for a period not exceeding sixty days. A motion was made to the Interstate Commission to reopen the case because of newly discovered evidence which consisted of certain extraordinary schedules of rates which had been filed in certain parts of the territory west of the Mississippi River and which had crossed over the Mississippi into the western part of the southern territory.

The Commission suspended its order of July 5, 1932, as amended, until further order, and reopened the proceeding before it for further hearing

> "for the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the previous hearing, the circumstances connected with and the conditions which occasioned such changes, and whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of defendant." (190 I. C. C. 589).

Report of the hearing in this reopened proceeding begins at R-917. The hearing was had at Jacksonville on November 21 and 22, 1932. A large number of witnesses were exam-

ined; and on January 9, 1933 the Commission handed down its report on this reopened proceeding; and found (190 I. C. C. 589):

> "The evidence introduced at the further hearing shows that certain carriers that operate in southwestern and southern territories have in recent months established rates on logs, bolts, billets, rough staves, and heading in amounts per car regardless of weight, which rates are on substantially the same level as the Cummer scale referred to. These rates were first established by certain railroads operating west of the Mississippi River, following a meeting held March 29, 1932, between their representatives and certain shippers, at which meeting it was agreed that rates of $12.50 for distances of 25 miles or less, $15 for distances of 25 but not over 50 miles, $17.50 for distances of 50 but not over 75 miles, and $22.50 for distances of 75 but not over 100 miles should be established in Arkansas, Louisiana, and Missouri experimentally in an effort to meet truck competition, and that they should expire by limitation December 31, 1932."

The tariffs establishing those rates are shown by the witness Green in his exhibit 134 (R-1318). He refers to and discusses this exhibit at R-920.

It will be noted that the Commission finds that those rates were applicable for the maximum distance of 100 miles, and first established in three States west of the Mississippi—Arkansas, Louisiana, and Missouri; and that they were established experimentally in an effort to meet truck competition; and that they were to expire at a specific time.

The Commission finds (190 I. C. C. 590) that on or about the same time some of the roads east of the Mississippi estab-

lished similar rates. This finding is sustained by the witness Green's exhibits Nos. 135, 136 and 137 (R-1319, 1320) and by the evidence of Mr. Green (R-920-930).

The Commission finds (190 I. C. C. 590) that:

> "Generally these rates are published to expire in one year unless sooner canceled, changed, or extended."

The Commission then found (190 I. C. C. 590) that:

> "The rates of these southern lines are not uniform and also vary somewhat from those referred to above as agreed upon by the southwestern carriers. Like those of the southwestern carriers, all are in amounts per car regardless of weight."

Those tariffs are generally limited to a maximum distance of 100 miles though some of them extend as high as 170 miles. (190 I. C. C. 590). *Those rates did not apply to all points on any of the lines using them.* In fact, they applied to relatively few points. For instance, the Commission finds (190 I. C. C. 590) as follows:

> "The per car rates of the Illinois Central System apply to approximately 30 manufacturing points east of the Mississippi River, 2 of which are in Tennessee, 2 in southern Louisiana, and the remainder in Mississippi; those of the Seaboard Air Line and the Central of Georgia to Montgomery only; those of the Western of Alabama to Montgomery and Selma; those of the Southern to Mobile, Selma, and York, Ala., Chattanooga and Memphis, Tenn., and Laurel and Corinth, Miss.; those of the Mobile & Ohio to Columbus, Corinth, and Meridian, Miss., Humboldt and Jackson, Tenn., and Mobile and Whistler, Ala.; those of the Columbus & Greenville

to Columbus, Greenville, Grenada, and West Point, Miss.; and those of the Gulf, Mobile & Northern, St. Louis-San Francisco east of the Mississippi River, and Nashville, Chattanooga & St. Louis to all points on those lines, although in practical effect those of the Gulf, Mobile & Northern and St. Louis-San Francisco apply only to manufacturing points, their application being dependent upon an outbound movement of manufactured products, as will be later explained. It will be noted that all of these rates apply in the western portion of southern territory and none in the eastern portion."

From this statement, which is amply supported by the evidence of J. O. Gill (R-976); H. P. Norden (R-1014, 1016); E. R. Gardner (R-1026); M. W. Thomas (R-1032, 1035, 1036); C. D. Thomas (R-1040), and R. I. Miles (R-1044, 1047), it will be seen that these rates were put in by these railroads to meet some particular circumstance and in an effort to recover traffic which had been lost to trucks or to competing roads or to a combination of trucks and other rail carriers, and that they were put in to only a very limited effect. Local rates to those points were not cancelled.

MAPS INTRODUCED BY APPELLANTS.

In this connection we desire to call attention to certain maps which were introduced in this cause:

First, to the map appearing in the volume marked "Exhibits physically reproduced for reference under stipulation of counsel." This map is marked "Railroad Junction Points Map," is unnumbered but appears immediately after exhibit No. 130. The map marks in color the entire lines of certain railroads east of the Mississippi and parts of lines of those and other railroads west of the Mississippi. That marking

may very well define, for instance, the Illinois Central System, but the marking should not be construed as indicating that these rates apply between all points on that System. As we have shown above, the rates applied to approximately thirty manufacturing points on the Illinois Central System which, of course, includes as well the Yazoo and Mississippi Valley Railroad. All the roads east of the Mississippi are marked in red. This marking includes the Illinois Central, while these rates applied on that road east of the Mississippi to only thirty manufacturing points and those were widely scattered. On the other roads these rates applied to only a few of the points, so that this map should be taken not as illustrating railroads which adopted these rates over their entire lines but rather as railroads which adopted the rates to a limited extent. The reason why the extent of the application of the newly reduced rates was limited was that they were intended to apply only to the extent of the evil to be cured.

The last exhibit in the aforementioned volume is exhibit 163 and is a map of the territorial United States showing a good many lines marked in green and in red; and what has been said as to the exhibit just above mentioned, applies to exhibit 163.

THE ORDER OF THE COMMISSION OF OCTOBER 21, 1932 REOPENING THE CASE, HAD THREE PRONGS.

1. The further hearing was for the sole purpose of receiving evidence respecting any change in the rates on logs since the close of the previous hearing;

2. The circumstances connected with and the conditions which occasioned such changes; and

3. Whether such circumstances and conditions, or any of them, are present with respect to the Florida intrastate log rates of Atlantic Coast Line.

(Statement of Examiner Hoy (R-917).

The Commission finds (190 I. C. C. 591) that:

> "The per car rates of these southern lines, like those of the southwestern lines, were established primarily as an experiment to meet actual truck competition which the carriers' investigations showed to exist. While the extent of this truck competition is not shown, it apparently was sufficiently compelling, in the judgment of the managers of these railroads, to warrant the establishment of these rates as an experiment. With some of these southern carriers, particularly the Mobile & Ohio and the St. Louis-San Francisco, carrier competition also had a considerable influence in the establishment of these rates. For example, a representative of the St. Louis-San Francisco testified that that road had decided not to establish these rates east of the Mississippi River, but was later forced to do so to meet the competition of other carriers, it having found that logs were being trucked from its rails to competing railroads which had previously established the per car rates. In this connection it should be remembered that the carrier transporting the logs to the manufacturing point at these per car rates is also assured of the outbound movement on the manufactured products, except in the case of the Nashville, Chattanooga & St. Louis, and, in some instances, the Southern.

"It is clear from the record that the object of the Southern lines in establishing these per car rates was not merely to

meet the truck competition on the logs, but was to be assured at the same time of receiving the outbound movement of the manufactured product," etc.

C. D. Thomas (R-1037-1042), Assistant General Freight Agent of the Southern Railway System, testified that his road had established truck competitive log rates at Chattanooga and certain other stations for distances of 100 miles and under for single line application; that the initial publication of those rates was surrounded with a transit arrangement; that the truck competitive scale was published upon request of two concerns operating at Chattanooga. Mr. Thomas states:

> "Their argument was that if the proper scale were established it would eliminate the movement of logs for short distances by truck."

The traffic officials of the Southern confirmed the statement that there was a substantial movement of logs by truck to Chattanooga. The witness states that a like arrangement was made at Laurel, Mississippi (R-1039); that for the four months, March, April, May and June a total of 50 cars from stations within 100 miles of Laurel moved under those rates; and for the four months July, August, September, and October, 50 cars moved. The witness stated:

> "Like the Chattanooga scale that is published as an experiment, to expire approximately twelve months after the date of publication, or July 26, 1933."

He stated that the same truck competitive scale was established to Memphis, Tennessee, from Southern Railway stations within 100 miles of Memphis, effective September 15, 1932, for both interstate and intrastate application; that the

movement of logs by rail to Memphis from stations on the Southern's line within 100 miles of Memphis was 5 cars in July, 1 car in August, 1 in September and 18 in October; that they established a truck-competitive scale to Corinth, Miss., but no movement into Corinth, Mobile, Selma or York, for the period June 1, 1932, through October 31, 1932, was shown by their investigation. He further stated:

> "In each of the instances where we have established truck competitive rates on logs, investigation through our division traffic officers has indicated actual truck competition, and representations have been made to us that the establishment of the truck-competitive scales would regain all or a substantial portion of the traffic." (R-1040).

Like evidence was given by the witness R. I. Miles (R-1043-1047), Commerce Agent of the Illinois-Central System.

Exhibit 155 (R-1359) shows the rates which were being applied over the Illinois Central and Yazoo and Mississippi Valley Railroad and the reshipping rates in Tennessee, Mississippi and Louisiana, east of the Mississippi River. The local rates, that is, the rates not there shown as the reshipping rates were much higher than the Cummer scale; and the reshipping rates; that is the rates after the products manufactured from the lumber, were reshipped, are higher than the Cummer scale. The last column of exhibit 155 shows a rate called "Truck Competitive Reshipping rates per car" for those two roads and are at $12.00, $15.00, $17.50, and $20.00 per car regardless of weight, the maximum distance being 100 miles.

The distances over which the traffic moved under these new rates on the Illinois Central were from 11 to 98 miles and

the large preponderance of the movement was between 35 and 50 miles (R-1045).

The witness J. O. Gill (R-974-980), general freight agent of the Gulf, Mobile & Northern Railroad, gave testimony as to the effect of these truck competitive rates, and states:

> "I am disappointed at the results although unquestionably we have regained some business from the trucks. I cannot say how much. However, our records show that for the short distances, that is, distances under 25 miles, by comparison, using 3-month period prior to the establishment of the truck competitive rates, and a 3-month period since the establishment of the rates, that at Jackson, Mississippi, we handled two cars on the truck competitive rates for distances under 25 miles as against none prior to the establishment of these truck competitive rates. Into Jackson, Tennessee, using the same period and the same distance, we handled two cars prior to the establishment of these rates, and none during the period since the effective date of the rates. In Laurel, Mississippi, for the three-months period prior to the establishment of the truck competitive rates for distances under 25 miles, we handled 10 cars as against 17 during the period since the effective date." (R-976).

The same witness continues: (R-977)

> "Going back to Jackson, Mississippi, we had an increase of 18 cars for distances 50 miles and over 25; and at Jackson, Tennessee, we had 39 cars as compared to 25 cars prior to the effective date. Laurel, Mississippi, shows up better. We had a movement of 355 cars as compared to 31 for distances 50 miles and over 25. For distances 75 miles and over 50 into Jackson, Mississippi, we had an increase of 5 cars; Jackson, Tennessee, 25 cars; Laurel, Mississippi, 21 cars. The aver-

age loading for the same periods into Jackson, Mississippi, was 65,470 pounds as compared to 69,000 pounds since the effective date of the changes."

It must be remembered that the local rates continued in effect (R-1040). *They have never been removed from any of the lines.*

The witness M. W. Thomas (R-1036-1037) assistant general freight agent for the Central of Georgia, testified to the general decline in the log traffic since 1927 and that competition was particularly effective on log traffic. He testified (R-1032) to the circumstances under which his road published tariffs to meet truck competition at Montgomery. He offers exhibits 150-154 (R-1350, et seq.). The Central of Georgia had handled a good deal of these logs and the lumber manufactured therefrom. Mr. Thomas looked upon the rates published to meet truck competition as an experiment and hoped for additional regulation of trucks in Alabama. The general movement of logs over the Central of Georgia Railway, except as to Montgomery, was being transported at the usual rates (R-1036).

Mr. E. R. Gardner (R-1024-1030), freight traffic manager of the Mobile & Ohio Railroad Company, stated that his road is paralleled a part of the way by other railroads; that on August 1, 1932 manufacturing or transit rates on logs, billets, bolts and handle material to the important manufacturing points on its line such as Columbus, Mississippi, Corinth, Miss., Humboldt, Tenn., Jackson, Tenn., Meridian, Miss., Mobile, Ala., Whistler, Ala. and Cario, Ill. were established by the Mobile & Ohio. Those rates were per car regardless of weight. There were two reasons which prompted

that road to put those rates into effect, the first was to meet competition created by its "neighbors" (R-1025), meaning no doubt, the paralleling lines; and the second reason was the loss of that particular traffic to unregulated trucks. He refers to the rates thus put in as experimental. He states his road had cross-country competition, meaning by that that logs were cut in such localities as to haul them ordinarily to his road but could be hauled by trucks to competing roads, and that the competing roads' rates were sufficiently low to induce the traffic to move to them. He thought that the rates had not been sufficiently tested but if he were called on to express an opinion, he would say they were unsuccessful (R-1027).

The Commission reviewed all this testimony (190 I. C. C. 592, 593) and then found:

> "Since the establishment of these per car rates the mill at Chattanooga, referred to above, will accept only cars that have a loading capacity of about 125,000 pounds and that its average loading ranges from 105,000 to 110,000 pounds; and that mills at Montgomery and Memphis have received cars loading over 90,000 pounds and a mill at Laurel has received cars loading as high as 122,000 pounds." (190 I. C. C. 593).

This is supported by the evidence at R-936, 941, 942.

The Commission further found:

> "Such truck competition as has been shown in the movement of logs in Florida is generally to the smaller lumber mills and between points where the rail hauls are 25 miles or less. A witness employed by the Florida intervener to make an investigation of the extent of the movement of logs by truck in Florida specified 23 mills

located at 19 different points in Florida to which all or substantially all of the logs cut were transported by truck. Most of these mills were cutting less than 10,000 feet of lumber a day, only four were cutting more. The 23 mills were cutting a total of less than 200,000 feet a day, which is less than the capacity of a single large Florida mills such as that of intervener Brooks-Scanlon Corporation at Foley, and is a very small percentage of the total lumber cut in Florida." (190 I. C. C. 593).

That finding is borne out by the witness Flack (R-1000 through 1010).

The Commission continues its findings as follows:

"This witness testified as to the range of the hauls by truck to nearly all of these mills, but did not know what the average hauls were, the location of the logs, or how far they were from a railroad. The maximum hauls were 10 miles or less to three of the mills, between 10 and 15 miles to two, between 15 and 20 to five, between 20 and 25 miles to four, between 25 and 30 miles to two, and between 30 and 45 miles to five. The length of the hauls to two of the mills were not known. Of the 23 mills, 7 were located on defendant's lines exclusively, 3 on the lines of defendant and the Seaboard Air Line, 1 on the lines of defendant and the Southern, 9 on the Seaboard Air Line exclusively, 1 on the Florida East Coast, 1 on the Georgia, Southern & Florida, and 1 on the Live Oak, Perry and Gulf. The 11 mills located on defendant's lines were cutting a total of approximately 87,500 feet a day, and the maximum haul by truck was 10 miles to two of the mills, between 10 and 15 miles to two, between 15 and 20 miles to two, between 20 and 25 miles to three, and between 25 and 30 miles to one. The length of the hauls to two were not known. The record does not show whether any of the

logs moved by truck to these 11 mills could have moved over defendant's lines. A cut of 87,500 feet a day represents approximately 20 carloads of logs, based on 4,231 board feet, to the carload, the average of one intervener as will hereinafter appear." (190 I. C. C. 593-4).

This finding is borne out by the evidence of the witness Flack (R-1000, et seq., especially at 1006).

The Commission after stating the limited application of the rates to the roads over parts of which they apply said:

> "It will be noted that all of these rates apply in the western portion of the southern territory and none in the eastern portion." (190 I. C. C. 590-1).

We desire to emphasize that the putting in of these rates by these railroads did not supplant the rates per 100 *pounds.*

The witness H. P. Norden (R-1012-1024) assistant general freight agent for the St. Louis-San Francisco Railway, testified:

> "Prior to the publication of these rates on a per car basis the Frisco Railroad along with other West Side lines had in transit rates on logs and rough material on a per 100 pounds basis; and as a matter of fact those rates on per 100 pounds basis still remain in effect. They alternate with the per car rates." (R-1013).

The rates per 100 pounds have never been taken out. For instance, we have seen that the per car rates on the Illinois Central applied to only two points in Tennessee and two points in southern Louisiana and to only thirty points east of the Mississippi River, while that road operates east of the

Mississippi River in Tennessee, Mississippi and in Louisiana. The rates which were in effect and applicable on all its other points were not the per car rates regardless of weight but were the rates per 100 pounds. This testimony was not disputed.

The Commission found (190 I. C. C. 591) as we have heretofore pointed out:

> "The per car rates of these southern lines, like those of the southwestern lines, were established primarily as an experiment to meet actual truck competition which the carriers' investigations showed to exist."

This is sustained by the evidence heretofore referred to of the various representatives of the railroads.

The Commission in its report, 190 I. C. C. beginning at page 593 summarizes much of the testimony given at the second reopened hearing and shows that the truck traffic for the particular distances of 25 miles to 50 miles was not being recaptured by the railroads as a result of the experimental rates.

Logs are cut in the woods and brought out from the woods and mills to the railroad or the highway. The distance to the mills then is relatively short. The unloading of the logs from the trucks to the trains makes it unlikely that the railroads will ever regain that kind of transportation. The evidence shows that the officials of the roads recognized that but it is beyond peradventure that the rates which were put into effect first on the western roads and then in the western part of the Southern territory, were, as the Commission states, "established primarily as an experiment to meet actual truck

competition which the carriers' investigations showed to exist."

The Commission then finds (190 I. C. C. 599) that:

"Transportation conditions are not substantially similar throughout southern territory. In our prior report on further hearing we specifically found that the circumstances and conditions surrounding the transportation of these logs intrastate in Florida were not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines. Therein we also pointed out that the less favorable operating conditions in the Florida peninsula than in the remainder of southern territory have given rise to the general practice of permitting the addition of arbitraries to the rates on interstate traffic to and from points in that territory. . . . . .

Even if transportation conditions were similar in Florida as on the lines of the carriers that have established the per car rates, competitive conditions are not similar, as has been pointed out. The carriers that have established the per car rates have done so voluntarily as an experiment in an endeavor to regain traffic that was moving by truck and thereby increase their revenues, not only on the logs to the mills but on the outbound manufactured products from the mills, their per car rates being conditioned upon an outbound movement of the manufactured products in nearly all instances.

"In Florida, on the other hand, the movement of logs has not been shown to have gone to the trucks to any substantial extent where the hauls are over 25 miles and this record warrants the conclusion that truck-competitive rates for distances under 25 miles would regain

little, if any, traffic, and that to require defendant to continue to maintain the Cummer scale to meet what little truck competition could be met would greatly decrease the revenues of defendant and would not be warranted. Logs in single carloads are now moving by rail over defendant's lines throughout Florida in substantially the same volume as at the time of the previous hearing and for the six months prior thereto, and the movement has not decreased to as great an extent as the outbound movement of lumber from Florida. The monthly movement since February 10, 1931, when the Cummer scale was reestablished, has been substantially the same as from the latter part of 1930, when the main depression in the lumber business in Florida began, to February 10, 1931, indicating that the reestablished substantially lower Cummer scale has had no effect on the volume of rail movement." (190 I. C. C. 599, 600).

The Commission holds that generally they do not approve of rates published in amounts per car regardless of weight and "nothing contained herein should be considered as an approval of rates so published on logs." (190 I. C. C. 600).

The Commission then affirms all the findings in its prior report on further hearing and vacates its order suspending the operation of its order of July 5, 1932, as amended.

XI

FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE UNITED STATES DISTRICT COURT, (Decided February 24, 1933, 4 Fed. Supp. 477. R-610).

These findings are also found as an appendix to the Statement of Atlantic Coast Line Railroad Company Opposing Jurisdiction and Motion to Dismiss or Affirm. The decree appears at page 33 of that document and the findings of fact and conclusions of law begin at page 34. The decree is also found at R-620.

The findings of fact make a resumé of the history of the case, and after stating the history of the cases through the proceedings in this court (282 U. S. 194), states:

> "Thereupon the Georgia Public Service Commission and the Atlantic Coast Line R. R. Company on due notice to all parties, including the present complainants, moved the Interstate Commerce Commission to reopen the case before it, which over objection was done, and much new evidence was added to that previously taken. A motion was made by the present complainants at the beginning of the hearing to dismiss the proceedings as respects any issue of burden on the revenues of the carrier, and to exclude all evidence directed to that contention. The motions were overruled by the examiner, and again by the full Commission, which after argument made an elaborate and lengthy report of its findings, put aside the question of undue prejudice by the State rates to persons and places in Georgia as unnecessary to be decided, but held the rates to be burdensome on the interstate carrier's revenues and thus a discrimination against interstate commerce, which it removed by again

prescribing under §13(4) of the Act future State rates to conform to the interstate rates which it had established as reasonable." (R-611-612).

The court finds that the conclusions of fact made by the Commission are well supported by the evidence, and

"*such as we would ourselves make therefrom.*" (R-612, Italics added).

The court summarizes the ultimate facts, and finds that:

"In 1928 and in 1932 comparisons of these rates (Cummer scale) with other rates on logs and on similar traffic in the same and neighboring territories showed them to average less than half of most other comparable interstate and intrastate rates, and to be much the lowest of any of them. They are about one-half the rates fixed by the Interstate Commerce Commission for interstate traffic on the same logs in substantially the same territory." (R-612).

The court also found that: (R-612-613).

"It appeared that the cost of the service in Florida was probably higher than elsewhere. It was found that there was no profit but an out-of-pocket loss to the carrier in log traffic under these rates, not considering taxes and return on the investment, and that consequently there was no contribution to the maintenance of the carrier as an efficient instrumentality of commerce, but a drain upon it. The total amount of this drain before 1929 was not found, nor could it be approximated from the evidence. But for the two years, 1929 and 1930, when the interstate rates fixed by the Interstate Commerce Commission were enforced, the log traffic under them was 18,602 cars and the gross revenue from this intrastate traffic was $571,508.94, whereas if the Cummer scale had been applied it would have been $281,225.75."

The falling off of the log traffic during that period was found

> "to be more due to the universal depression in business and to the moving of mills to the timber than to the raise in rates, because there was no substantial increase after the Cummer rates were restored following the decision of the Supreme Court above referred to. Abundant available timber still exists in Florida, and is being rapidly reproduced, so that the future traffic will likely amount to at least 7,431 cars per year, and the average gross revenue on it under the new rates will be more than $100,000.00 per year greater than the Cummer scale would yield, thus converting a loss on the business into a profit of that approximate amount. As showing that the carrier as an instrumentality of interstate commerce cannot afford to absorb the loss under the Cummer scale, or to forego the support to be derived from the new scale, it is found that the carrier's net return on its investment is steadily falling from year to year, and in 1930 was only 2.54%." (R-613).

The court might also have stated that return was only an operating return, before interest and other non-operating charges.

The court continues:

> "On these findings the general finding was made that the Cummer rates are and in the future will be unjustly discriminatory against interstate commerce, and that such unjust discrimination can and should be removed by rates not less than the scale prescribed for interstate commerce." (R-613).

The court refers to the reopening of the proceeding by the Commission in October, 1932, and the taking of further evi-

dence in November, showing that many voluntarily reduced rates had been established, and then finds as follows:

> "It (the Commission) found, and the evidence well warranted the finding, that the reductions were a temporary experiment made in the effort to recapture traffic which had been taken away by trucks, and generally the lowered rates carried an obligation that the manufactured article should also be moved by the carrier making the rate. The experiment has met with but little success. No such rates exist in the Florida territory here involved, nor is truck competition there such as to make unremunerative rates judicious as likely to improve net revenues. On January 9th, 1933, the Commission reaffirmed its order of July 5, 1932." (R-613-614).

CONCLUSIONS OF LAW BY THE COURT (R-614, ET SEQ., P. 38 OF THE COAST LINE'S STATEMENT OPPOSING JURISDICTION, ETC.).

The court's conclusions of law open with this statement:

> *"We are of opinion that the particular findings are sufficient to support the general finding of un ust discrimination by the State rates against interstate commerce by undue burden on the interstate carrier's revenues, and to justify an order removing the discrimination by establishing the new rate prescribed."* (R-614, italics added).

The court discusses the contention that the pleadings in this case did not invoke the power of the Commission on the basis that a burden by the State rates was placed on the revenue of the carrier, and disposes of that adversely to complainants' contentions. We have heretofore referred to that. The court

adhered to its views expressed in the cases of *Florida v. United States* [30 Fed. (2d) 116, and 31 Fed. (2d) 580] and also refers to the fact that this court disposed of that contention in the case of *State of Florida v. United States* (282 U. S. 194, at 209).

The court also refers to the contention of the complainants that the Commission erred in not requiring the Coast Line to produce a statement supported by individual car-record movements, showing certain details as to cars of logs moving on its lines between points in Florida and Georgia for each of the years 1926, 1927, 1928, 1929 and 1930, a like statement showing cars moving within the State of Florida for each of those years, and a statement showing the gross earnings from both interstate and intrastate shipments of such logs for each of those years. The court states:

> "The Railroad Company in answer stated that it expected to furnish certain appropriate data about its log traffic, but could not get up the statements requested for lack of time and because its records did not show the distinctions in log traffic required. The Railroad Company did produce details of its log traffic since 1928, but not before. The Commission refused to compel further compliance. It will be noted that no specified books or papers were asked to be produced, nor any specified witness called on to tell what he might know." (R-615).

The court, after making those statements, holds:

> "We are aware of no rule of law or practice which would require a litigant laboriously to compile information for his adversary, even if it were in his power to do so. Certainly it would lie in the discretion of the tribunal to decline to compel it. We find in such refusal

no cause to upset an order founded on evidence which was duly produced before that tribunal." (R-615-616).

The court states this point was further pressed on the ground that the information demanded was essential to a finding of unjust discrimination, the revenue before 1929 under the State rates being one of the things mentioned by the Supreme Court as necessary to be established. The court holds:

> "We do not understand that the revenue, either gross or net, produced by the State rates must be exactly established, but only that the operation of those rates and their effect upon the carrier must be investigated and found. It was here established that the State rates produced a loss, and were a drain on the carrier. It might have been desirable to show the extent of the loss, but if that be impracticable, and if it appear that the loss will be in the future substantial and the carrier is not in position to absorb it without detriment to his service and support as an interstate carrier, a sufficient case is made to find an unjust discrimination against interstate commerce, and to require its correction." (R-616).

The court then disposed of the argument that the System averages of cost were extended to certain instances, finding:

> "The ascertainment of the general fact of loss is said to be unlawful because the witnesses and the Commission dealt in part with the average cost of similar service over the Coast Line System and the general cost of hauling freight in the division which substantially embraces the State of Florida, rather than the actual cost of hauling logs in Florida. But it was shown that the latter information could not be gotten; that the cost of service in Florida for reasons given was greater than elsewhere in the System, so that average costs for the System really

showed a less cost than the Florida costs if they could have been separately ascertained. The difference in cost between hauling logs and other carload freight was also given attention. Not infrequently the best evidence obtainable has to be used as a basis for inferences, and conclusions of fact made therefrom with due allowance or possible inaccuracies are not invalidated because the best evidence logically possible was not at hand." (R-616).

The court then disposes of the claim that Appendix E to the report of the Commission (186 I. C. C. 196) entitled, "Estimated Costs of Transporting Logs in Florida for the Average Distance of 81.36 miles based on A. C. L. Average Costs per Unit for Calendar Year 1929 Applied to the Average Units Involved in Hauling Logs in that State," is wrong because it was evidence considered by the Commission which was not introduced in the proceeding, and correctly holds that Appendix E is not evidence but that it is

> "the Commission's conclusion as to the cost of hauling logs in Florida for the distance shown to be the average under the Cummer scale." (R-616-617).

There is no quantity in Appendix E which was not taken from the evidence [See Lamb's exhibits 78-85 incl. (R-1134*a*-1139); exhibit 86 as corrected, copy of which is in this brief; Perrin's exhibit 61 (R-1101) and its several sheets; and the evidence as to the average mileage the logs were hauled, R-700].

The court next deals with the appellants' contention which it states is strongly urged that

> "the direct prescription by the Interstate Commerce Commission of an intrastate rate is prima facie an un-

constitutional invasion of the province of the State, so that the burden is on the defendants here to justify it before the court, and that in order to justify it the facts of justification, to-wit, those showing the State rate to be an unjust discrimination against interstate commerce, must clearly appear to this court, the findings of the Commission not being conclusive, nor in themselves weighty on the very point of the Commission's jurisdiction." (R-617).

The court holds:

"It is not doubted that the power of the Commission to make an order is a judicial question, and that the court may examine it independently. When, however, the very fact upon the existence of which the power to act depends has been contradictorily tried before the Commission itself, its conclusion fully expressed upon its record affirming the existence of the fact is certainly sufficient to put the burden upon those who deny it. While at one time all findings of the Commission were declared by the statute to be only prima facie evidence of their correctness, that language has now been retained only with reference to money awards and to valuations of property by the Commission, and it is well established that under the enlarged and positive powers with which the Commission is now vested its findings of fact *within the scope of its powers* will not be reviewed by the courts if supported by evidence. *Merchants Warehouse Co. v. United States*, 283 U. S. 501. Where the matter examined relates to its power to act at all the decisions are perhaps not so explicit, but we may refer to the following expressions of the court as bearing directly upon it: In *I. C. C. v. Northern Pacific R. R. Co.*, 216 U. S. 538, 544, it was said: 'We are of the opinion that the Commission had no power to make the order if a reasonable and satisfactory through route already existed, and that the existence of such a route may be inquired into by

the courts. How far the courts should go in that inquiry we need not now decide. No doubt in complex and delicate cases great weight should be attached to the judgment of the Commission.' In *Interstate Commerce Commission v. Union Pacific R. R. Co.*, 222 U. S. 541, 547, in discussing fundamental questions of the Constitutional and statutory power of the Commission it was said: 'In determining these mixed questions of law and fact the court confines itself to the ultimate question whether the Commission acted within its power . . . Its conclusion, of course, is subject to review, but when supported by evidence is accepted as final; not that its decision, involving as it does so many and such vast public interests, can be supported by a mere scintilla of proof, but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order.'

"In *Interstate Commerce Commission v. L. & N. R. R. Co.*, 227 U. S. 88, the court held that the power of the Commission to alter rates depended upon the fact of their unreasonableness, but that the Commission having found no evidence that they were excessive, its order was not to be disturbed. In *United States v. L. & N. R. R. Co.*, 235 U. S. 314, 320, the language held is: 'It is not disputable that from the beginning the very purpose for which the Commission was created was to bring into existence a body which from its peculiar character would be most fitted to primarily decide whether, from facts disputed or undisputed, in a given case, preference or discrimination existed, and the amendments by which it came to pass that the findings of the Commission were made not merely *prima facie* but conclusively correct in case of judicial review, except to the extent pointed out in the Illinois Central and other cases supra, show the progressive evolution of the legislative purpose and the inevitable conflict which exists between giving that purpose effect and upholding the view of the statute

taken by the court below. It cannot be otherwise since if the view of the statute upheld below be sustained the Commission would become but a mere instrument for the purpose of taking testimony to be submitted to the courts for their ultimate action.'

"We need not decide whether in this case the Commission's finding of unjust discrimination is entitled to any less weight because it is a prerequisite of its jurisdiction as well as the meritorious basis for its exercise, because we have examined the evidence independently and are led to the same conclusion that the unjust discrimination exists. (R-617-619, italics added).

The court then deals with the evidence as to the lower voluntary rates made by other carriers, that is the rates referred to in the Commission's third report (190 I. C. C. 588) and holds:

"We find nothing to require a different conclusion." (R-619).

The court then makes this crucial finding:

"If log traffic done in Florida on the Cummer scale is all an out-of-pocket loss, the less of it done the better. The destruction of it would help by stopping a loss. If but a little business be done on remunerative rates so much profit would be substituted" (R-619, italics added).

The court further holds:

"The findings and the evidence show the Cummer scale of rates to constitute such a substantial revenue burden on the interstate carrier and on interstate commerce as to cause a discrimination against the latter and to give the Commission power to remove it under Inter-

state Commerce Act, §13(4). The action to be taken in removing it is left by the section to the judgment of the Commission. It having power in this case to prescribe a proper intrastate rate, its judgment as to the level of the rate to be established in order to accomplish the desired revenue result ought not to be overriden when sustained by evidence and violative of no law. We uphold the orders of the Commission." (R-619).

PART TWO

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I

LAW OF THE CASE

The law of this case appears to have been fixed in the decision of this court when the case was before it on the first appeal—*State of Florida v. United States*, 282 U. S. 194. In that opinion the power of the Interstate Commerce Commission to act on the particular facts involved was established beyond dispute.

The court there held (282 U. S. 210):

> "The power of the Congress to authorize the Interstate Commerce Commission to establish intrastate rates in order to remove an unjust discrimination against interstate commerce is not open to dispute."

Many authorities are cited.

The court stated (282 U. S. 211):

> "The question in the present cases then, is not one of authority but of its appropriate exercise. The propriety of the exertion of the authority must be tested by its relation to the purpose of the grant and with suitable regard to the principle that whenever the federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the federal power must clearly appear."

The Commission had that opinion before it when it tried this case. The Commission and counsel treated that case as the yardstick by which this case should be tried.

The intermediate findings, or the findings which may otherwise be called basic, were ascertained and made by the Commission in the greatest detail and in the final analysis those findings depend not only on substantial evidence, but practically all of them are based on undisputed evidence.

II

NO CONFLICT OF EVIDENCE

This statement of the lack of conflict of evidence applies throughout all, or practically all, of the case.

There was no controversy over the evidence of the comparisons which showed that the revenue from the application of the Cummer scale of rates on logs in Florida was only about one-half to one-third of that from the application of the interstate scale, which was being contemporaneously applied throughout the Southern territory and which had been found to be reasonable.

There was no conflict of evidence given to prove that the Cummer scale of rates was only about one-half of the rates prescribed by the Interstate Commission on sand and gravel in the southeast, and less than half of the rates prescribed on the same commodity to points in Florida south of the Jacksonville-River Junction Line.

There was no evidential dispute that it cost more to do transportation business in Florida than elsewhere on the Atlantic Coast Line's System, because of the lack of density of traffic and the shortness of hauls.

There was no evidential dispute as to the lack of density of traffic in Florida as compared with other parts of the Atlantic Coast Line's System.

There was no dispute as to the comparison of the Cummer scale of rates with the scales of rates on logs applicable on other roads throughout the southern territory, showing always that the Cummer scale was very much lower; nor was there

any conflict over the fact that the Cummer scale of rates was and is the lowest scale of rates in existence.

The Commission found that the Cummer scale of rates was "less than compensatory."

We do not contend, nor did the Commission claim, that the mere unreasonableness of intrastate rates gave to the Commission jurisdiction to supplant those intrastate rates with rates prescribed by it.

We do contend that the Interstate Commission has the right to remove intrastate rates which are inimicable to interstate commerce; and we likewise contend that intrastate commerce should bear its fair proportionate part of the expense of maintaining the transportation system used for interstate and intrastate commerce. We contend that the Cummer scale of rates applied to the Florida log traffic did not carry its fair proportionate part of the cost of maintaining the railroad's system which was used for both interstate and intrastate commerce. The amount of this log traffic intrastate in Florida was very great and it made a burden upon interstate commerce. *Wisconsin R. R. Comm. v. C. B. & Q. R. R.* 257 U. S. 589; *Minnesota Rate cases*, 230 U. S. 352; *United States v. Louisiana*, (decided Nov. 6, 1933) 78 L. Ed. 51; *Florida v. United States*, 282 U. S. 194.

III

STATUTORY LAW RELIED UPON

The Atlantic Coast Line relies upon:

§2 of the Interstate Commerce Act, which is as follows:

> "That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

§3, so much of which is necessary to the matter under consideration, is as follows:

> "(1) That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

§13(4) which is as follows:

"Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

And §15(a), (2), (3), and (4), which are as follows:

"(2) Except as otherwise provided in this Act, all orders of the Commission, other than orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force until its further order, or for a specified period of time, according as shall be prescribed in the order, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.

"(3) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its

own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property, or the maxima or minima, or maxima and minima, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated; and this provision, except as herein otherwise provided, shall apply when one of the carriers is a water line. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of different character; nor shall the Commission have the right to establish any route, classification, or practice, or any rate, fare, or charge when the transportation is wholly by water, and any transportation by water affected by this Act shall be subject to the laws and regulations applicable to transportation by water.

"(4) In establishing any such through route the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line), require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established: *Provided*, That in time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission it may (either

upon complaint or upon its own initiative without complaint, at once, if it so orders without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making of filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest."

IV

THE CUMMER SCALE OF RATES WAS INIMICAL TO THE PROPER INTERESTS OF INTERSTATE COMMERCE

This court held in the first case (282 U. S. 210):

> "It was not the fact that the rate was affirmatively prescribed by the State, but that it was maintained as an intrastate rate and *as such was inimical to the proper interests of interstate commerce* that led the Congress to give to the Interstate Commerce Commission express authority to take cognizance of that rate and to prescribe the intrastate rate that should be charged thereafter in order to remove the undue discrimination." (Italics added).

The Florida Railroad Commissioners, as we have seen, appeared throughout this litigation in an effort to maintain the Cummer scale of rates.

The intrastate rates in Florida on logs (Cummer scale) as we have seen, were found by the Commission not only to be "less than compensatory," but also far less than other rates on similar products, from one-half to one-third of the rates found to be reasonable by the Interstate Commerce Commission for interstate traffic on the same commodity between Florida and Georgia and also throughout the Southern territory.

The Commission also found that these intrastate rates did not bear their fair proportionate share of operation and maintenance alone. (186 I. C. C. 187).

V

HOW THE INTRASTATE RATES MANIFEST THE QUALITY OF BEING INIMICAL TO THE INTERSTATE RATES

The court has not laid down limitations as to the manner in which intrastate rates may be inimical to interstate rates so far as these writers know. When this case was first before this court, the court said (282 U. S. 210):

> "The Commission has no general authority to regulate intrastate rates and the mere existence of a disparity between particular rates on intrastate and interstate traffic does not warrant the Commission in prescribing intrastate rates."

The court has never held that disparity between rates can not be so great that the rates through that disparity or otherwise will not work unjust discrimination against interstate commerce.

The court in the Wisconsin case has made utterances very much to the contrary (257 U. S. 586) where the court, after reviewing the circumstances under which §§13(4) and 15 (a) of the Interstate Commerce Act were enacted, and also referring to the fact that the purpose of Congress was to maintain an adequate national railway system, said:

> "The effective operation of the Act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system."

And then says:

"If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an 'undue, unreasonable, or unjust discrimination against interstate or foreign commerce,' within the ordinary meaning of those words." (257 U. S. 586).

An undue disparity between intrastate and interstate rates is worked for that it increases the proportion which the interstate traffic must bear to maintain the transportation system while it decreases the proportion which intrastate traffic bears for that purpose.

The court in the Wisconsin case (257 U. S. 589) said:

"Congress in its control of its interstate commerce system is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonable compensatory return for all the work it does. The States are seeking to use that same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it unless compensation is received for the intrastate business reasonably proportionate to that for the interstate business. Congress as the dominant controller of interstate commerce may, therefore, restrain undue limitation of the earning power of the interstate commerce system in doing state work. The affirmative power of Congress in developing interstate commerce agencies is clear."

This court has said nothing to the contrary. On the other hand when this case was first before it the court (282 U. S. 211) said:

"As intrastate rates and the income from them must play a most important part in maintaining such a system,

the effective operation of the Act requires that intrastate traffic should pay 'a fair proportionate share' of the cost of maintenance. And if there is interference with the accomplishment of the purpose of the Congress because of a disparity of intrastate rates as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it."

The findings of the Commission in its second report in this case have amply covered all the requirements of the decision of this court.

VI

THE FLORIDA LOG TRAFFIC UNDER THE CUMMER SCALE DID NOT BEAR ITS FAIR PROPORTIONATE SHARE OF THE COST OF MAINTENANCE

The Commission has specifically so found. (186 I. C. C. 187). We again quote the Commission's finding on this point:

> "In determining whether the Cummer scale results in unjust discrimination against interstate commerce the fundamental question, in the language of the Supreme Court in *Wisconsin R. R. Comm. v. C. B. & Q. R. R. Co.*, 257 U. S. 563, 568, and in *Florida v. United States*, 282 U. S. 194, 211, is whether the traffic moving on that scale pays 'a fair proportionate share' of the cost of maintaining defendant, or whether it causes an undue revenue burden upon the interstate traffic of defendant. The record shows the low earnings of defendant; the low earnings on its log traffic as compared with its earnings on other low-grade commodities; the much lower earnings on its Florida log traffic than on its interstate log traffic; and the much lower level of the Cummer scale than of other scales applicable interstate and intrastate throughout the South. These facts and the cost evidence clearly warrant the conclusion that the traffic moving under the Cummer scales does not pay its 'fair proportionate share' of operation and maintenance alone."

This finding was made after a detailed accounting which showed that the income of the Atlantic Coast Line Railroad Company from operations was extremely small; that it had been declining year by year. The accounting evidence showed a statement of the earnings, expenses and resulting income through the year 1930 when the return on investment from

operations of the road was only 2.37%, and that was before interest and other charges which are not classified as operating expenses had been taken into account. (Taxes and uncollected revenue were taken into account).

The Commission found that the gross receipts from the log transportation in Florida were "insufficient under all the circumstances and conditions to cover the full cost of the service." (186 I. C. C. 187).

The Commission made that finding after its own ascertainment of the cost had been made, of which it said:

> "The above figures undoubtedly understate the cost of transporting logs in Florida for several reasons." (186 I. C. C. 187).

The Commission's findings no longer stop with a bare determination that the Cummer scale of rates is unjustly discriminatory against interstate commerce. They find that (186 I. C. C. 189) and they make the basic findings to sustain that finding.

VII

THE DISCRIMINATION IN THIS CASE WAS FOUND BY THE COMMISSION TO HAVE BEEN SUBSTANTIAL

An accurate account was taken of the movements of logs intrastate in Florida over the Atlantic Coast Line from February 8, 1929 to January 31, 1931 (Exhibit 61, R-1101). The amount of revenue which would have been received had the Cummer scale of rates been applied during that period was ascertained and aggregated and the revenues which were actually received under the rates fixed by the Interstate Commerce Commission as the minimum rates necessary to remove the unjust discrimination against interstate commerce, were also ascertained and aggregated. The Commission dealt with exhibit 61 at 186 I. C. 167, and found that the total movement of such logs during that period was, as we have shown, 18,602 carloads; that the gross revenues from this movement were $571,508.94; that if the Cummer scale had been applicable the movement would have produced gross freight revenues of only $281,225.75, or $290,283.19 less than those actually collected.

In other words, the disparity between the Cummer scale of rates and the rates prescribed by the Interstate Commission for intrastate application on logs in Florida was more than 100%.

We must recollect that the scale of rates prescribed by the Commission for application on logs in Florida and which was in effect during that period, was the same scale of rates as the interstate scales which applied on all logs moving interstate during the same period in the entire southern territory.

The Commission found and there was evidence to support the finding, as we have heretofore pointed out, that the cost of doing transportation business over the Atlantic Coast Line was greater in Florda than on any other part of the System.

It then found that if the Cummer-scale of rates had been applicable for the movement of logs over the entire System of the Atlantic Coast Line during the years 1929 and 1930, the result would have been a loss of $657,381.21. (186 I. C. C. 168); that the movement of logs over six feet in length, during 1929 and 1930, consisted of 3,450,764,300 pounds of which the interstate movement was 456,134,800 pounds and the intrastate 2,994,630,500; that the revenues from all of those logs amounted to $1,483,424.87 of which the revenue on interstate movements amounted to $266,654.12 and on intrastate to $1,216,770.75. As we have seen the interstate movement was on a uniform scale of rates; that is, on the same scale of rates which the Commission ordered into effect in Florida in its order of August 2, 1928, and which was also in effect in Alabama and in Virginia and for a part of the time in South Carolina. It was ordered into effect in Georgia but the order was cancelled because of the Florida situation.

The figures as to the loss of revenue were ascertained after the mills at Milldale, Ortega and East Port (the first two were operated by the Cummer Cypress Co. and the last one by Brooks-Scanlon Corporation) had stopped shipping logs. They ceased to ship logs either immediately with the going into effect of the order of the Commission of August 2, 1928 to-wit February 8, 1929 or within a few days thereafter. If those companies had continued to ship logs—the transporta-

tion of the logs to them was in train-load lots—the difference in the amount of revenue would have been much greater.

It is not as though we were dealing alone with the present, for the quantity of timber still standing in Florida is, as we have stated, tremendous. The four large mills owned at the time of the Commission's second report (July 5, 1932) 2,800,000,000 feet and the entire amount of standing timber in Florida amounted to about 22,000,000,000 feet. If the Cummer scale should continue in effect, the result would be to practically destroy the Atlantic Coast Line Railroad Company.

Certainly there was substantial unjust discrimination against interstate commerce worked by the Cummer scale of rates.

From another part of the brief, under the discussion of exhibit 61 (p. 44 of this brief) we have seen that for the period beginning February 8, 1929 and ending January 31, 1931, the gross revenues received from the Florida log shipments by the Atlantic Coast Line were $571,508.94; and if those logs had been transported under the Cummer scale of rates, the revenues would have been $281,225.75, or $290,283.19 less than what they were and what the Commission determined to be reasonable.

We then turn to page 102 of appellants' brief and find that for the year 1926, which was the year in which this proceeding was started, four of the lumber companies paid for their shipments of logs intrastate in Florida over the Atlantic Coast Line, under the Cummer scale of rates, $652,311.87. From R-766 we may see that in that year the Brooks-Scanlon

Corporation alone moved 15,889 cars of logs and for the period 1926-1930 the same company shipped 163,245 cars. The very large shipments of Cummer Cypress Company are shown at R-731. At R-744 we may find the large shipments of Putnam Lumber Company and at R-779 we may find from the evidence of Mr. C. R. MacPherson that the Wilson Cypress Company shipped 4,333 cars in 1926; 4,754 cars in 1927; 5,531 cars in 1928; 2,140 cars in 1929 and 5,142 cars in 1930 or a total of 21,800 cars with total freight revenues of $562,295.38.

The court below held:

> "We do not understand that the revenue, either gross or net, produced by the State rates must be exactly established, but only that the operation of those rates and their effect upon the carrier must be investigated and found. It was here established that the State rates produced a loss, and were a drain on the carrier. It might have been desirable to show the extent of the loss, but if that be impracticable, and if it appear that the loss will be in the future substantial and the carrier is not in position to absorb it without detriment to his service and support as an interstate carrier, a sufficient case is made to find an unjust discrimination against interstate commerce, and to require its correct." (4 Fed. Supp. 477, 480; R-616).

VIII

THE EFFECT OF THE DECREASE IN SHIPMENTS

There is no doubt but that the shipment of logs in Florida decreased; that a percentage of the decrease was due to the increase in rates; another percentage was due to the general business depression; and another percentage was due to the economic propriety of the change from the standpoint of the shipper and of the railroad.

The Commission makes no finding as to what percentage is to be attributed to each of the above causes of decline in log traffic, but it does find (190 I. C. C. 600) that:

> "Logs in single carloads are now moving by rail over defendant's lines throughout Florida in substantially the same volume as at the time of the previous hearing and for the six months prior thereto, and the movement has not decreased to as great an extent as the outbound movement of lumber from Florida."

The gross revenues to the Atlantic Coast Line Railroad from the intrastate log traffic in Florida are not, at the present time, so great as they were prior to the Commission's order. This decline was already under way for one of the large mills had moved from tidewater to the timber or to the near vicinity of the timber. The record shows, as we have pointed out that the evidence of the complainants shows that it was not economical to operate mills at tidewater even under the Cummer scale on the long hauls being made. The shortest haul on trainload movements was 119 miles—Hines to Palatka; and the hauls to the mills in the vicinity of Jacksonville (Milldale, Ortega and Eastport) were about 169

miles. The only advantage of the mills being located at tidewater was that they might have the ocean-going rates on the outbound products but on shipments which moved inland and westward, they did not get ocean-going rates.

Under the findings of the Commission, supported by the evidence, each pound of logs hauled intrastate in Florida over the Atlantic Coast Line under the Cummer scale caused a loss of income (the word "income" is here used in contradistinction to "revenue," revenue meaning the gross earnings from operations, and "income" meaning those gross earnings less the expenses incurred in making them.) The result of this was that each carload of logs transported by the Atlantic Coast Line under the Cummer scale worked confiscation which had to be made up out of its other sources of revenue. The Commission found that this traffic, in the great quantities described, worked and for the future would work unjust discrimination against interstate commerce.

The effect of the finding by the Commission was that the Cummer scale of rates maintained by the State of Florida for intrastate transportation of logs over the Atlantic Coast Line up to 170 miles was "inimical to the proper interests of interstate commerce." (282 U..S. 210).

IX

THE EFFECT WHICH IS TO BE GIVEN TO THE FINDINGS OF THE INTERSTATE COMMERCE COMMISSION

Over and over again it has been held by this court that the findings of fact by the Interstate Commerce Commission will not be disturbed by the courts if supported by evidence.

See *Virginian Rwy. v. United States*, 272 U. S. 658, where the court stated the rule as follows:

> "Whether a rate is unjustly discriminatory is a question on which the finding of the Interstate Commerce Commission supported by substantial evidence is conclusive, unless there has been some irregularity in the proceeding or some error in the application of rules of law."

In the same case the court at page 663 held:

> "To consider the weight of the evidence before the Commission, the soundness of the reasoning by which its conclusions were reached, or whether the findings are consistent with those made by it in other cases, is beyond our province."

See also:

I. C. C. v. D. L. & W. R. R., 220 U. S. 235;

Los Angeles Switching case, 234 U. S. 294, 311;

Western Paper Makers' Chemical Co. v. United States, 271 U. S. 268, 271;

Skinner & Eddy Corp. v. U. S. 249 U. S. 557, 562;

New England Divisions case, 261 U. S. 184, 204;

Tagg Bros. & Moorhead v. U. S. 280 U. S. 420.

Notwithstanding this often announced principle of law, a large part of our opponents' brief is taken up in undertaking to uphold their theories of accounting against the ascertainments of the Interstate Commission, all of which, we respectfully submit, are entirely out of order.

X

(A) CLAIM OF STATE OF FLORIDA THAT IT IS ENTITLED TO A DE NOVO INVESTIGATION UNDER THE PROCESSES OF THE COURT

The basis of this claim is stated to be the Tenth Amendment to the Constitution of the United States, which is as follows:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The power to regulate commerce with foreign nations, among the several states and with the Indian tribes was completely delegated to the United States Government. In its sphere, it is supreme; it acknowledges no superior and that includes the States. Along with the Constitutional power to regulate interstate commerce is the general power in Congress to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by the Constitution in the Government of the United States or in any department or office thereof. Article I, §8, sub §17.

From the beginning this court has declared that these constitutional grants gave to Congress the power to regulate such internal commerce as may be necessary to give full force and effect to the essential provisions of the Constitution.

In this case when here before, the court held (282 U. S. at 210) that it was not necessary to first go to the State gov-

ernment to ask that they sit in judgment on the issue of the lawfulness of the intrastate rates. That would be to impose a limitation not required by the terms of the statute and repugnant to the grant of authority.

The making of a rate for future application is a legislative process. *Great Northern Rwy. v. Merchants Elevator Co.*, 259 U. S. 285, 291.

The United States Government having the legislative power over interstate commerce and over that intrastate commerce which discriminates against interstate commerce has the right to say in what manner that power shall be exercised. It has created the Interstate Commerce Commission to pass upon that question. It has given the State regulatory bodies having jurisdiction over these subjects, power to sit with its Commission to determine the relation between the state and interstate rates. The Florida Commission has not exercised that power. It has preferred to take the position of an adversary litigant and it has maintained that position from the beginning, and is now maintaining it. The Congress has given to the Commission created by it the power to regulate internal commerce within a State in so far as that is essential to prevent discrimination against interstate commerce.

> "When, however, the State in dealing with its internal commerce undertakes to regulate instrumentalities which are also used in interstate commerce, its action is necessarily subject to the exercise by Congress of its authority to control such instrumentalities so far as may be necessary for the purpose of enabling it to discharge its constitutional function."
>
> *The Minnesota Rate cases*, 230 U. S. at 411.

In dealing with the relation of the intrastate and interstate rates, it is the Government, and not the State, which exercises the supreme authority. *Houston and Texas Ry. v. United States,* (*Shreveport case*) 234 U. S. 342.

> "Where matters falling within the state power, as above described, are also by reason of their relation to interstate commerce within the reach of the Federal power, Congress must be the judge of the necessity of Federal action; until Congress does act, the States may act.
>
> "The paramount authority of Congress enables it to intervene at its discretion for the complete and effective government of that which has been committed to its care, and, for this purpose and to this extent, in response to a conviction of national need, Congress may displace local laws by substituting laws of its own." *Minnesota Rate cases,* 230 U. S. 353.

As to those intrastate matters which affect interstate commerce, the States "are subject to its (Congress') authority," etc. *Crowell v. Benson,* 285 U. S. at 50.

The State of Florida derived no power from the Constitution of the United States to enforce intrastate rates for a transportation system used in both interstate and intrastate commerce which discriminate against interstate commerce.

The claim of our opponents is based more immediately upon the case of *Crowell v. Benson,* 285 U. S. 22, which is not a commerce case at all, but concerns the maritime jurisdiction.

The court has recognized that in certain cases the owner of property devoted to a public use who claims his property is

being taken without due process of law under improper rate structures, is entitled to have the issue submitted to a judicial tribunal upon its own independent judgment as to both facts and law. Such cases are referred to in *Crowell v. Benson* at page 60 of the opinion and include *Ohio Valley Water Co. v. Ben Avon Borough*, 253 U. S. 287; *Prendergast v. New York Telephone Co.*, 262 U. S. 43, 50; *Tagg Bros. & Moorhead v. United States*, 280 U. S. 420, 443, and *Phillips v. Commissioner*, 283 U. S. 589, 600.

At page 50 of the opinion, the court states in *Crowell v. Benson*:

> "As to determinations of fact, the distinction is at once apparent between cases of private right and those which arise between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments."

A State in the regulation of its commerce, in so far as that commerce interferes with the regulation of interstate commerce, is subject to the authority of the United States Government.

The court in the Benson case divided private rights and these public matters into two classes which it called "categories," and stated that the case then at bar was concerned with the right of Benson to recover under the Longshoremen's and Harbor Workmen's Compensation Act of March 4, 1927 and does not fall within the category concerning public rights;

> "but is one of private right, that is, of the liability of one individual to another under the law as defined." (285 U. S. 51).

It had previously held that:

> "There are matters involving public rights, which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which Congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper."

The court cites to support this *Murray's Lessee v. Hoboken Land and Improvement Co.*, 18 Howard, 272, 284.

The court appends a note numbered 13 which cites a large number of cases, including *Virginian Rwy. Co. v. United States*, 272 U. S. 658, and a number of other familiar cases.

The case of *Crowell v. Benson* falls into that category which concerned private rights. The case at bar falls into that category which concerns public rights. Congress has provided means for the determination by the States and others at interest as to whether that right is invaded by its legislative action. That method includes the taking of individual hearings before the Interstate Commission, and a trial before a court of competent jurisdiction.

In the case at bar the court did not reach its opinion only on the theory that the decision of the Interstate Commerce Commission was supported by evidence; but it has given to the complainants, including the State of Florida, the benefit of a *de novo* hearing on the record presented before the Interstate Commerce Commission. It has determined that the judgment of the Commission is such as it, the court would itself have made.

(B) THE CLAIM OF THE APPELLANTS OTHER THAN THE STATE OF FLORIDA THAT THEY WERE ENTITLED TO A DE NOVO HEARING ON THE RECORD

Our first answer to this is that they had a *de novo* hearing on the record, as will be seen from the findings of fact and conclusions of law of the court below, to which we have already referred.

Our next answer is that what we have said in reference to the somewhat similar claim of the State of Florida applies to the corporate appellants.

They claim the violation of no Constitutional right.

The many decisions which we have cited as to the conclusive effect which the court gives to findings of the Interstate Commerce Commission dealing with the claims of shippers that rates are unjust or unreasonable apply here. Shippers have no constitutional right to service from a public service corporation, including railroads, at specified rates. They have the right to require the service of railroads at only rates which are fixed by the railroad or by public authority having jurisdiction thereover. *United States Light & Heat Corp. v. Niagara Falls Gas and Elec. Light Co.*, 47 Fed. (2d) 567, certiorari denied, 283 U. S. 864.

XI

DISCUSSION OF THE THIRD REPORT OF THE INTERSTATE COMMERCE COMMISSION

(*Georgia Public Service Commission v. Atlantic Coast Line Rd. Co.*, 190 I. C. C. 588, decided January 9, 1933).

This hearing very largely turned on the comparison of rates. That is, the comparison of rates made on the per-car basis without regard to weight, with other rates. As we have pointed out the newly reduced rates introduced at the third hearing before the Commission, did not supersede other rates established by the same railroads between the same points. They were established at relatively few points on each railroad; they were not system-wide rates on any railroad. They were put into experimental effect to meet truck and rail competition, all of which we have shown.

In determining the issue of the reasonableness of rates the Commission has the right

> "to compare the rates assailed with other rates *which in its judgment* formed a proper basis of comparison."

Northern Pac. Ry. Co. v. United States, 60 Fed. (2d) 302, 308. (This was a three-judge case, Judges Sanborn, Cant and Nordbye presiding). The court cited *I. C. C. v. L. & N. R. R. Co.*, 227 U. S. 88, 98. The court meant that the very fact of determining that rates used in comparison are proper rates for that purpose is a duty of the Commission and requires the exercise of the Commission's skill and judgment. Rates

which are forced by competition and by circumstances beyond the control of the carrier may be so low as to destroy their value for the purposes of comparison. The Northern Pacific case above referred to cites and quotes from *Louisville & Nashville Rd. Co. v. United States,* 238 U. S. 1, 12, as follows:

> "The same is true of determining, by comparison, the reasonableness of freight charges. Until some standard is adopted they may prove nothing . . . even where the two hauls are over the same mileage. For the rate attacked may tend to show that the others are too low—while they in turn might be relied on to prove the first is too high. Both may be unreasonably high, or too low, *because compelled by conditions over which the carrier had no control. Water competition, rail competition, and competition of markets, enter so largely into the establishment of rates that mere distance is not necessarily a determining factor;* indeed, the statute itself recognizes that there may be circumstances under which it is lawful to charge less for a long haul than for a short haul over the same road. But while all this be true, it is, nevertheless, a fact that a comparison of rates between two points on the same road, or with the charges on other roads, may furnish evidence of probative value." (Italics added).

In the case at bar the interstate rates were established and were not under attack. They might very well have been accepted by the Commission as the measure of reasonableness of the intrastate rates for the transportation of logs in Florida over the Coast Line.

CONCLUSION

The Interstate Commerce Commission, as we have seen, had three lengthy hearings on this subject, and three times it has made findings thereon.

The Interstate Commission has time and again, on the motions of complainants, refused to reopen this case.

After these hearings and after considering every rate structure submitted to them or mentioned in appellants' briefs, and after considering the record of pleadings and evidence, which should be described as stupendous, the Commission has determined that the rates under the Cummer scale did not bear their fair proportionate share of the cost of maintaining the transportation system used in interstate and intrastate commerce; and that they unjustly discriminated against interstate commerce. The District Court has upheld the Commission's findings.

The effect of the Cummer scale of rates has been to hold to Florida a commerce in logs which, after the cutting of a great many years, is still estimated at about twenty-two billion feet of standing timber, with a reproduction power of four hundred feet to the acre per year.

The Cummer scale of rates was the lowest scale in existence. As compared with rates on other lines in Florida such as the Seaboard Air Line, Florida East Coast and Southern Railway (Georgia, Southern & Florida Ry. Co.), they represented much less than the charges of either of those roads for the same service.

If the Cummer scale of rates should be applied to the transportation of even a fair part of the vast amount of logs proximate to the Atlantic Coast Line Railroad in Florida, the difference between the revenues which they would produce and those which would be produced from such transportation under a normal scale of rates would be stupendous, amounting to a great many millions of dollars.

If the rates under the Cummer scale are restored, long hauls under them may be again expected. The appellant, F. S. Buffum Company, began the operation of its mills at Jacksonville during the period when the rates were under investigation.

Every finding of the Interstate Commission is amply supported by the evidence. Any claim to the contrary evaporates under the slightest examination of the facts.

We respectfully submit, therefore, that the decree of the District Court appealed from, should be affirmed.

Respectfully submitted,

Carl N. Dean

W. E. Kay

Robert C. Ausbon

Attorneys for Atlantic Coast Line Railroad Company.

February 5, 1934.

APPENDIX I-a

Exhibit No. 87
(corrected)
Witness: Geo. W. Lamb
I. C. C. Docket 18361.

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER LOADED AND EMPTY CAR MILE

Average Haul	"A"		"B"	So-called Cummer Scale
1. Miles		81.36		
2. Average Revenue per Car				$15.12
3. Empty Haul—Miles		81.36		
4. Total Car Miles—1 plus 3		162.72		
5. Out of pocket expenses per loaded and empty car mile			2.95176¢	
6. Out of pocket expenses per loaded and empty car mile (100%)	11.388314¢a		15.486186¢b	
7. Operating Costs—4x6	$18.53		$25.20	
8. Income Taxes—3.00985% of 2—7#	x		x	
9. Florida Taxes—15.3950% of 7#	2.85		3.88	
10. Operating Expenses—Taxes—7 plus 8 plus 9	21.38		29.08	
11. 5¾% Return on Investment—7x32.97536%	6.11		8.31	
12. Total Cost including Return on Invest.	27.49		37.39	

#See Exhibit No. .....

Note: a Item 5 "A" equals 25.9192% of Total Freight Haulage Expenses only.

b Item 5 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 6, "A" and "B" respectively.

APPENDIX I-b

Exhibit No. 88
(corrected)
Witness: Geo. W. Lamb
I. C. C. Docket 18364

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER GROSS TON-MILE

From: Perry to Eastport	"A"	"B"	So-called Cummer Scale
1. Miles	169.00		
2. Average Revenue per Car			$22.10
3. Average Billing Weight—pounds	59,743		
3. Average Tare Weight—pounds	33,000		
5. Average Tare Weight — Empty Haul—lbs.	33,000		
6. Gross Weight—pounds	125,743		
7. Gross Tons	62.871		
8. Gross ton miles—7x1	10,625		
9. Out of pocket expenses per gross ton mi.		.0882888¢	
10. Out of pocket expenses per gross ton mi. (100%)	.3406309¢a	.4632005¢b	
11. Operating Costs—8x10	$36.19	$49.22	
12. Income Taxes—3.00985% of 2—11#	x	x	
13. Florida Taxes—15.3950% of 11#	5.57	7.58	
14. Operating expenses—Taxes—11+12+13	41.76	56.80	
15. 5¾% Return on Investment—11x32.97536%	11.93	16.23	
16. Total Cost including Return on Investment	53.69	73.03	

#See Exhibit No.

Note: a Item 9 "A" equals 25.9192% of Total Freight Haulage Expenses only.

b Item 9 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 10, "A" and "B" respectively.

APPENDIX I-c

Exhibit No. 39
(corrected)
Witness: Geo. W. Lamb
I. C. C. Docket 18364.

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out o Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER GROSS TON-MILE

From: Carbur to Eastport	"A"	"B"	So-called Cummer Scale
1. Miles	152.00		
2. Average Revenue per Car			$20.30
3. Average Billing Weight — pounds	59,717		
4. Average Tare Weight — pounds	33,000		
5. Average Tare Weight — empty haul lbs.	33,000		
6. Gross Weight — pounds	125.717		
7. Gross Tons	62.858		
8. Gross ton miles —7x1	9,554		
9. Out of pocket expenses per gross ton mi.		.08832888¢	
10. Out of pocket expenses per gross ton mi. (100%)	.3406309¢a	.4632005¢b	
11. Operating Costs—8x10	$32.54	$44.25	
12. Income Taxes— 3.00983% of 2—11#	x	x	
13. Florida Taxes— 15.3950% of 11#	5.01	6.81	
14. Operating expenses— Taxes—11+12+13	37.55	51.06	
15. 5¾% Return on Investment 11x32.97536%	10.73	14.59	
16. Total cost including Return on Investment	48.28	65.65	

#See Exhibit No. _____

Note: a Item 9 "A" equals 25.9192% of Total Freight Haulage Expenses only.

b Item 9 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 10, "A" and "B" respectively.

APPENDIX I-d

Exhibit No. 90
(corrected)
Witness: Geo. W. Lamb
I. C. C. Docket 18364

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER GROSS TON-MILE

From: Homosassa to Perry	"A"	"B"	So-called Cummer Scale
1. Miles	130.00		
2. Average Revenue per Car			$20.62
3. Average Billing Weight—pounds	64,179		
4. Average Tare Weight—pounds	33,000		
5. Average Tare Weight Empty haul—lbs.	33,000		
6. Gross Weight—pounds	130,179		
7. Gross Tons	65.089		
8. Gross ton miles—7x1	8,462		
9. Out of pocket expenses per gross ton mi.		.0882888¢	
10. Out of pocket expenses per gross ton mi. (100%)	.3406309¢a	.4632005¢b	
11. Operating Costs—8x10	$28.82	$39.20	
12. Income Taxes—3.00985% of 2—11#	x	x	
13. Florida Taxes—15.3950% of 11#	4.44	6.03	
14. Operating expenses—Taxes—11+12+13	33.26	45.23	
15. 5¾% Return on Investment—11x32.97536%	9.50	12.93	
16. Total Cost including Return on Investment	42.76	58.16	

#See Exhibit No. .....

Note: a Item 9 "A" equals 25.9192% of Total Freight Haulage Expenses only.
b Item 9 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 10, "A" and "B" respectively.

APPENDIX I-e

Exhibit No. 91
(corrected)
Witness: Geo. W. Lamb
I. C. C. Docket 18364

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER GROSS TON-MILE

From: Hines to Palatka	"A"	"B"	So-called Cummer Scale
1. Miles	119.00		
2. Average Revenue per Car			$19.96
3. Average Billing Weight—pounds	62,325		
4. Average Tare Weight — pounds	33,000		
5. Average Tare Weight — Empty haul—lbs.	33,000		
6. Gross Weight—pounds	128,325		
7. Gross tons	64.162		
8. Gross ton miles—7x1	7,635		
9. Out of pocket expenses per gross ton mi.		.0882888¢	
10. Out of pocket expenses per gross ton mi. (100%)	.3406309¢a	.4632005¢b	
11. Operating Costs—8x10	$26.01	$35.37	
12. Income Taxes—3.00985% of 2—11#	x	x	
13. Florida Taxes—15.3950% of 11#	4.00	5.45	
14. Operating Expenses—Taxes—11+12+13	30.01	40.82	
15. 5¾% Return on Investment—11x32.97536%	8.58	11.66	
16. Total Cost including Return on Invest.	38.59	52.48	

#See Exhibit No.

Note: a Item 9 "A" equals 25.9192% of Total Freight Haulage Expenses only.

b Item 9 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 10, "A" and "B" respectively.

APPENDIX I-f

Exhibit No. 92
(corrected)
Witness: Geo. W. Lamb
I. C. C. Docket 18364

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER GROSS TON-MILE

From: Astor to Groveland

	"A"	"B"	So-called Cummer Scale
1. Miles	99.00		
2. Average Revenue per Car			$13.78
3. Average Billing Weight—pounds	49,983		
4. Average Tare Weight — pounds	33,000		
5. Average Tare Weight — Empty haul—lbs.	33,000		
6. Gross Weight—pounds	115,983		
7. Gross Tons	57.991		
8. Gross ton miles—7x1	5,741		
9. Out of pocket expenses per gross ton mi.		.0882888¢	
10. Out of pocket expenses per gross ton mi. (100%)	.3406309¢a	.4632005¢b	
11. Operating Costs—8x10	$19.56	$26.59	
12. Income Taxes—3.00985% of 2—11#	x	x	
13. Florida Taxes—15.3950% of 11#	3.01	4.09	
14. Operating Expenses—Taxes—11+12+13	22.57	30.68	
15. 5¾% Return on Investment—11x32.97536%	6.45	8.77	
16. Total cost including Return on Investment	29.02	39.45	

#See Exhibit No.

Note: a Item 9 "A" equals 25.9192% of Total Freight Haulage Expenses only.

b Item 9 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 10, "A" and "B" respectively.

APPENDIX I-g

Exhibit No. 93
(corrected)
Witness: Geo. W. Lamb
I. C. C. Docket 18364

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER GROSS TON-MILE

From Homosassa to Lacoochee	"A"	"B"	So-called Cummer Scale
1. Miles	68.00		
2. Average Revenue per Car			$12.44
3. Average Billing Weight—pounds	51,320		
4. Average Tare Weight—pounds	33,000		
5. Average Tare Weight—Empty haul—pounds	33,000		
6. Gross Weight—pounds	117,320		
7. Gross Tons	58.66		
8. Gross Ton Miles—7x1	3,989		
9. Out of pocket expenses per gross ton mi.		.0882888¢	
10. Out of pocket expenses per gross ton mi. (100%)	.3406309¢a	.4632005¢b	
11. Operating Costs—8x10	$13.59	$18.48	
12. Income Taxes—3.00985% of 2—11#	x	x	
13. Florida Taxes—15.3950% of 11#	2.09	2.84	
14. Operating Expenses—Taxes—11+12+13	15.68	21.32	
15. 5¾% Return on Investment—11x32.97536%	4.48	6.09	
16. Total Cost including Return on Investment	20.16	27.41	

#See Exhibit No. _____

Note: a Item 9 "A" equals 25.9192% of Total Freight Haulage Expenses only.

b Item 9 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 10 "A" and "B" respectively.

APPENDIX I-h

Exhibit No. 94
(corrected)
Witness: Geo. W. Lamb
I. C. C. Docket 18364

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER GROSS TON-MILE

From: Homosassa to Otter Creek	"A"		"B"	So-called Cummer Scale
1. Miles		52.00		
2. Average Revenue per Car				$12.02
3. Average Billing Weight—pounds		56,053		
4. Average Tare Weight—pounds		33,000		
5. Average Tare Weight—Empty haul—pounds		33,000		
6. Gross Weight—pounds		122,053		
7. Gross Tons		61.027		
8. Gross ton miles—7x1		3,173		
9. Out of pocket expenses per gross ton mi.			.0882888¢	
10. Out of pocket expenses per gross ton mi. (100%)	.3406309¢a		.4632005¢b	
11. Operating Costs—8x10	$10.81		$14.70	
12. Income Taxes—3.00985% of 2—11#	x		x	
13. Florida Taxes—15.3950% of 11#	1.66		2.26	
14. Operating Expenses—Taxes—11+12+13	12.47		16.96	
15. 5¾% Return on Investment—11x32.97536%	3.56		4.85	
16. Total Cost including Return on Investment	16.03		21.81	

#See Exhibit No.

Note: a Item 9 "A" equals 25.9192% of Total Freight Haulage Expenses only.

b Item 9 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 10, "A" and "B" respectively.

APPENDIX I-i

Exhibit No. 95
(corrected)
I. C. C. Docket 18364
Witness: Geo. W. Lamb

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER LOADED AND EMPTY CAR-MILE

From: Perry to Eastport.	"A"	"B"	So-called Cummer Scale
1. Miles	169.00		
2. Average revenue per car.			$22.10
3. Empty haul—miles	169		
4. Total haul—1+3	338		
5. Out of pocket expenses per loaded and empty car mile		2.95176¢	
6. Out of pocket expenses per loaded and empty car mile (100%)	11.3789¢a	15.4862¢b	
7. Operating costs—4x6	$38.46	$42.37	
8. Income taxes—3.00985% of 2—7#	x	x	
9. Florida taxes—15.3950%# of 7#	5.92	8.06	
10. Operating expenses—taxes—7+8+9	44.38	60.40	
11. 5¾% return on investment—7x32.97536%	12.68	17.26	
12. Total cost including return on investment	57.06	77.66	

#See Exhibit No.

Note: a Item 5 "A" equals 25.9405% of Total Freight Haulage Expenses only.
b Item 5 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 6, "A" and "B" respectively.

APPENDIX I-j

Exhibit No. 96
(corrected)
I. C. C. Docket 18364
Witness: Geo. W. Lamb

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER LOADED AND EMPTY CAR-MILE

From: Carbur to Eastport.	"A"		"B"	So-called Cummer Scale
1. Miles		152.00		
2. Average revenue per car.				$20.30
3. Empty haul—miles		152.00		
4. Total car miles—1+3		304		
5. Out of pocket expenses per loaded and empty car mile			2.95176¢	
6. Out of pocket expenses per loaded and empty car mile (100%)	11.3789¢a		15.4862¢b	
7. Operating costs—4x6	$34.59		$47.08	
8. Income taxes—3.00985% of 2—7#	x		x	
9. Florida taxes—15.3950% of 7#	5.33		7.25	
10. Operating expenses—taxes—7+8+9	39.92		54.33	
11. 5¾% return on investment—7x32.97536%	11.41		15.52	
12. Total cost including return on investment	51.33		69.85	

#See Exhibit No._____

Note: a Item 5 "A" equals 25.9405% of Total Freight Haulage Expenses only.
b Item 5 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 6, "A" and "B" respectively.

APPENDIX I-m

Exhibit No. 99
(corrected)
I. C. C. Docket 18364
Witness: Geo. W. Lamb

ATLANTIC COAST LINE RAILROAD COMPANY

Estimated Cost of Handling Logs in Florida, Based on "Out of Pocket" Expenses Actually Assigned to the Third Division of the Atlantic Coast Line Railroad Company Operating Entirely Within the State of Florida.

BASED ON COST PER LOADED AND EMPTY CAR-MILE

From: Homosassa to Otter Creek.	"A"		"B"	So-called Cummer Scale
1. Miles		52.00		
2. Average revenue per car.				$12.02
3. Empty haul—miles		52.00		
4. Total car miles—1+3		104		
5. Out of pocket expenses per loaded and empty car mile			2.95176¢	
6. Out of pocket expenses per loaded and empty car mile (100%)	11.3789¢a		15.4862¢b	
7. Operating costs—4x6	$11.83		$16.11	
8. Income taxes—3.00985% of 2—7#	x		x	
9. Florida taxes—15.3950% of 7#	1.82		2.48	
10. Operating expenses—taxes—7+8+9	13.65		18.59	
11. 5¾% return on investment—7x32.97536%	3.90		5.31	
12. Total cost including return on investment	17.55		23.90	

#See Exhibit No.

Note: a Item 5 "A" equals 25.9405% of Total Freight Haulage Expenses only.
b Item 5 "B" equals 19.0606% of Total Freight Expenses. Raised to 100% on line 6, "A" and "B" respectively.